VOLUME XLI NUMBER 1

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# Massachusetts Law Quarterly

MARCH, 1956

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**NOTICE TO THE BAR**
**NEW RULES and ORDERS of the SUPERIOR COURT**

**THE REPORT OF THE COMMISSION TO SURVEY THE JUDICIAL SYSTEM OF MASSACHUSETTS**

**and**

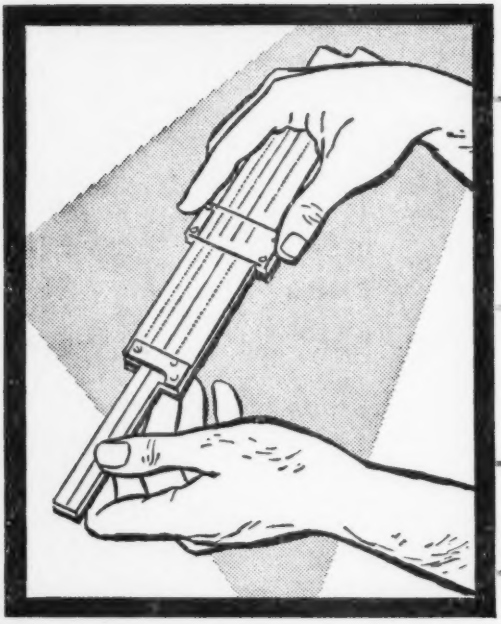
**The Administration of all the Courts in the Commonwealth**

**The GOVERNOR'S Message, Transmitting the Report**
**The Report of the Commission**
**Two Minority Reports on Certain Matters**
**Supporting Reports of the Commission**

**Program of the Northeastern Regional Meeting of the American Bar Association for the New England States and New York at Hartford, Connecticut, April 15, 16, 17, 18, 1956.**

**Issued by the Massachusetts Bar Association**

**15 Pemberton Square** **Boston 8, Massachusetts**



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**For ATTORNEYS-**

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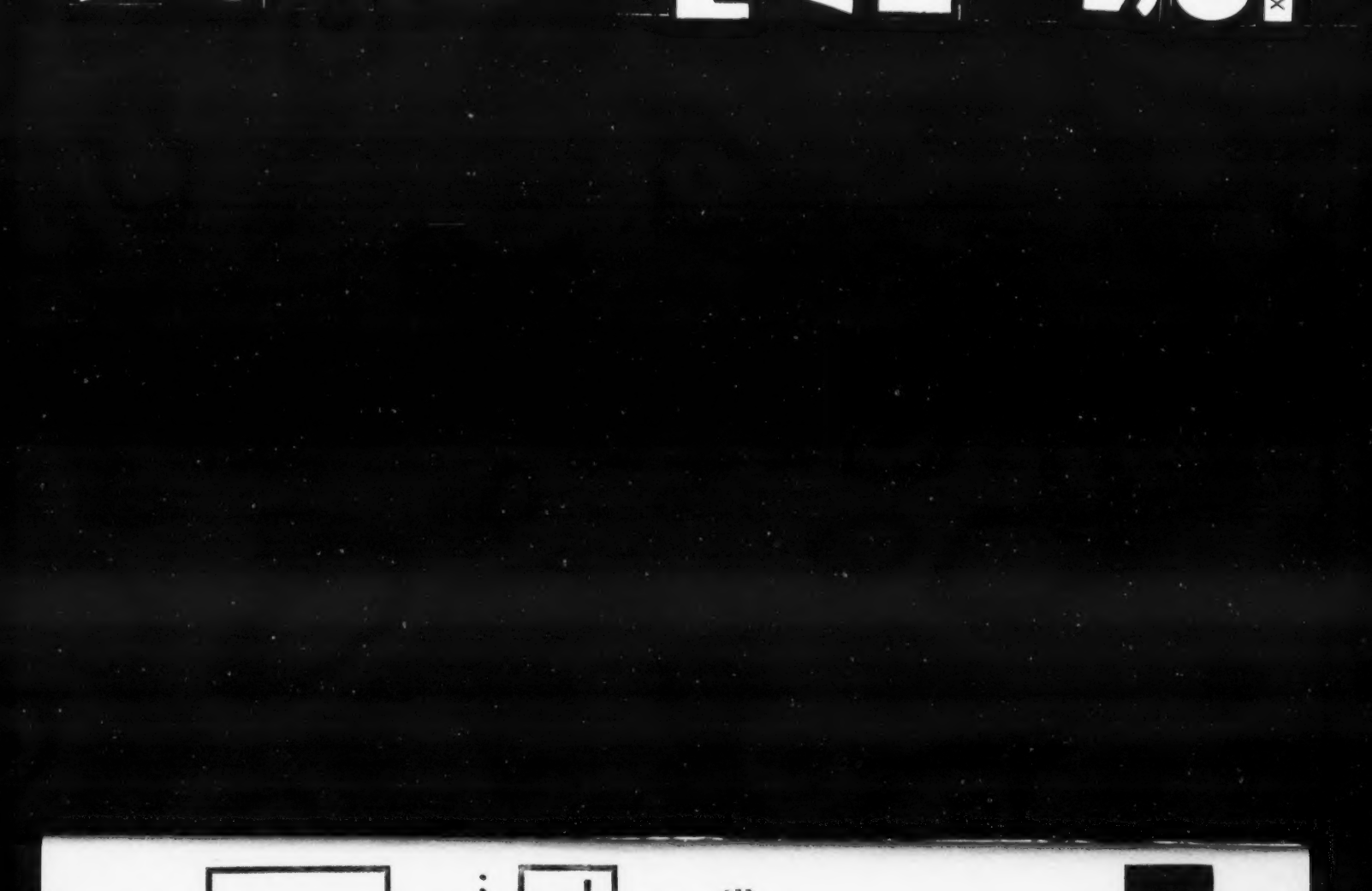

# Massachusetts Law Quarterly

**Volume XLI** **MARCH, 1956** **Number 1**

EDITORIAL BOARD

*Editor-in-Chief*
FRANK W. GRINNELL

*Associate Editors*
GEORGE K. BLACK ALBERT WEST HARTLEY C. CUTTER

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## NOMINATING COMMITTEE

The following members of the Association, Lee M. Friedman, Chairman, Boston; Robert W. Bodfish, Springfield; Gershon D. Hall, Harwich; Michael Carchia, Belmont; Richard Wait, Harvard; have been appointed by the President as a Nominating Committee to nominate a President, Vice-Presidents, Secretary, Assistant Secretary, Treasurer and seven members of the Board of Delegates. They shall notify the Secretary of such nominations, so that the notice of the Annual Meeting may contain a list of such nominations. Other nominations in writing may in like manner be made for any of such offices by not less than nine members of the Association.

FRANK W. GRINNELL, *Secretary*

*NOW READY—*

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*See page XIV.*

# NORTHEASTERN REGIONAL MEETING OF THE AMERICAN BAR ASSOCIATION

## *April 15, 16, 17, 18, 1956*

*Headquarters* — HOTEL STATLER, Hartford, Connecticut

*Covering the States of:* CONNECTICUT, MAINE, MASSACHUSETTS, NEW HAMPSHIRE, NEW YORK, VERMONT

### SUNDAY, APRIL 15

**2:00 P.M.** Registration opens.

**5-7 P.M.** Reception and Cocktail Party sponsored by the State Bar Association of Connecticut, Hartford County Bar Association, New Haven County Bar Association, Bridgeport Bar Association.

### MONDAY, APRIL 16

**9:30 A.M. — 11:30** Assembly Session Ball Room.

*Presiding:* CYRIL COLEMAN, Hartford, *Chairman.*

Welcome by Governor and the Chief Justice of Connecticut, the Mayor of Hartford and the President, State Bar Association of Connecticut.

Responses by representatives of the American Bar Association.

*Addresses:* E. SMYTHE GAMBRELL, Atlanta, Georgia, *President,* American Bar Association and HON. CLINTON A. ANDERSON, *United States Senator* from New Mexico.

**12:15 P.M.** Assembly Luncheon.

*Presiding:* CHARLES W. PETTENGILL, Greenwich, *Co-Chairman.*

### INSTITUTES AND WORKSHOP SESSIONS

**2:00 P.M.** Pre-Trial Demonstration sponsored by the Section on Judicial Administration and the Junior Bar Conference—Ball Room.

*Presiding:* HONORABLE BOLITHA J. LAWS, *Chief Judge,* United States District Court for the District of Columbia.

*Panel:* Richard W. Galiher, Paul Connolly, Joseph Bulman, David G. Bress, Francis W. Hill, Jr., all of Washington, D. C.

A demonstration of how effective Pre-Trial Procedure can narrow the scope of the triable issues and assist in the speedier disposition of cases.

**2:00 P.M.** Administrative Practices in Action sponsored by the Section on Administrative Law.

A. How Trial Tactics in an Administrative Proceeding Differ from Trial Tactics in a Court Case.

B. Trial of a Board of Contract Appeals case.

*Panel Members:*

Chairman, Robert Sheriffs Moss; Counsel for Contractor, John C. Hayes, Bernard J. Gallagher; Counsel for the Government, Gilbert A. Cuneo; Board of Contract Appeals, Theodore H. Hass, all of Washington, D. C.

Do your clients have contracts with the Government? See how disputes are handled with the Government Contracting Officer and how appeals from decisions of the Contracting Officer are tried before Government Contract Appeals Boards.

**2:30 P.M.** Labor Relations and Arbitration sponsored by the Section on Labor Law.

A. Developments under the National Labor Relations Act.
Kenneth C. McGuiness, Associate General Counsel, National Labor Relations Board.

B. The Uniform Arbitration Act and Labor Relations.

*Panel:*

Prof. Archibald Cox, Harvard Law School; J. Noble Braden, Executive Vice-President, American Arbitration Association; Saul Wallen, Arbitrator; Burton A. Zorn, New York; Benjamin Wyle, General Counsel, Textile Workers Union of America; Norman Zolot, Counsel Connecticut Federation of Labor.

**2:30 P.M.** Estate Planning sponsored by the Real Property, Probate and Trust Law Section.

A. Conflicts of Laws on the Exercise of Powers of Appointment.
Harrison F. Durand, New York.

B. Current Problems in Estate Planning and Drafting Wills and Trusts.

Joseph Trachtman, New York; Paul B. Sargent, Boston.

**5:30 — 7:00 P.M.** Reception and Cocktail Party.

**8:30 P.M.** An Evening's Entertainment.

## TUESDAY, APRIL 17 — BREAKFAST MEETINGS

**8:00 A.M.** Breakfast Meeting sponsored by the National Conference of Bar Presidents and the Section on Bar Activities—Hotel Bond.

*Presiding:* COLIN MACR. MAKEPIECE, Providence, *Secretary*, National Conference of Bar Presidents; WILLOUGHBY A. COLBY, Concord, *Chairman*, Section on Bar Activities.

The officers of all state and local bar associations are cordially invited to an informal discussion of the purposes and activities of the Conference and Section.

**9:00 A.M.** The Investigation, Preparation of Medical Evidence and Trial of a Case Involving Traumatic Injury to the Heart. Sponsored by the Insurance Law Section.

Discussion by prominent heart specialists on the function of the heart and the effect of trauma. Examination of the specialists by prominent trial counsel for the plaintiff and counsel for the defendant.

**9:30 A.M.** Zoning and Planning in a Highly Developed Area. Sponsored by the Municipal Law Section.

*Presiding:* KEITH B. HOOK, Hartford.

Regional Planning and Zoning.
Hon. Harry Heher, Justice Supreme Court of New Jersey.

Recent Trends in Zoning in the Northeast.
Fred G. Stickel, Jr., Newark.

Developments in Regional Planning and Zoning.
Elmer R. Coburn, Assistant Director Connecticut Development Commission.

**11:30 A.M.** The Relationship of The Legal Profession with the Administration of Criminal Justice. Sponsored by the Criminal Law Section.

Hon. J. Edward Lumbard, United States Court of Appeals, Second Circuit, Former United States District Attorney.

**12:30 P.M.** Luncheon—Committees on Legal Aid and Lawyer Referral.

*Presiding:* WILLIAM T. GOSSETT, Detroit, *Chairman*, Legal Aid Committee; ORISON S. MARDEN, New York, *Chairman*, Lawyer Referral Service Committee.

*Address:* Whitney North Seymour, New York, Delegate from, and past President The Association of the Bar of the City of New York.

12:30 Luncheon Columbia Law School Alumni.
12:30 Luncheon Cornell Law School Alumni.
12:30 Luncheon Harvard Law School Alumni.
12:30 Luncheon Judge Advocates' Association.
12:30 Luncheon Yale Law School Alumni.

**2:00 P.M.** Trial Tactics Panel Continuation.

**2:00 P.M.** Problems of Closely Held Corporations. Sponsored by the Section on Corporation, Banking and Business Law.

*Presiding:* CHURCHILL RODGERS, New York, *Vice-Chairman* of Section.

*Panel:* Charles Goodwin, Jr., New York; John F. Rich, Boston; George C. Seward, New York; Charles W. Steadman, Cleveland.

A discussion of (1) maintenance and control over shareholders and director action, (2) agreements among shareholders relating to management and control, (3) tax matters, and (4) restrictions on transfer of shares.

**2:00 P.M.** Status of Judicial Reform in the Northeastern States. Sponsored by the American Judicature Society.

*Panel:* Prof. Elias Clark, Yale Law School; Prof. Livingston Hall, Cambridge, Vice-Dean, Harvard Law School; Ernest McCormick, Hartford, Chairman, Connecticut State Bar Association Committee on Court Reorganization; James L. Oakes, Brattleboro, Chairman, Section on Judicial Reform, Vermont State Bar Association; Harold B. Tanner, Providence, Chairman, Judiciary Committee of the Rhode Island Bar Association; Harrison Tweed, New York.

**7:30 P.M.** Regional Banquet (dress optional).

**9:30 P.M.** Dance sponsored by the Junior Bar Conference.

## WEDNESDAY, APRIL 18

**9:30 A.M.** Fundamental Income Tax Problems of Small Individually-Owned Businesses. Sponsored by the Taxation Section and the Committee on Continuing Legal Education, American Law Institute.

*Presiding:* DAVID W. RICHMOND, Washington, *Chairman* of Section on Taxation.

**9:30 A.M.** Workshop Conference for Lawyers and Laymen Interested in Traffic, Transportation, Highways, Traffic Safety and Traffic Courts. Sponsored by Special Committee on Traffic Courts of the American Bar Association.

A. The Engineer Looks at the Lawyer.
Carl E. Fritts, Washington, Vice-President, The Automotive Safety Foundation.

B. Automobiles, Accidents and Attorneys.
Lewis C. Ryan, Syracuse, State Delegate to the American Bar Association.

C. The Lawyer and Transportation.
Franklin M. Kreml, Evanston, Illinois, Director, Transportation Center, Northwestern University.

D. Legal Problems in Vehicle Manufacturing.
Bruce G. Booth, Detroit, Legal Staff, General Motors Corp.

**9:30 A.M.** Business Aspects of Practice for Small and Large Office. Sponsored by Committee on Continuing Legal Education, American Law Institute.

Arch M. Cantrall, Clarksburg, West Virginia.

A discussion of all aspects of running a law office, large or small, including time recording, bookkeeping and filing, with a complete set of recommended forms.

**12:30 P.M.** Luncheon, Junior Bar Conference.

*Presiding:* C. FRANK REIFSNYDER, Washington, D. C., *Vice-Chairman*, Junior Bar Conference.

*Address:* HON. RAYMOND E. BALDWIN, *Associate Justice*, Supreme Court of Errors of Connecticut.

**2:00 P.M.** Traffic Court Conference (continuation).

E. Lawyers in Traffic Law Enforcement.
Robert L. Donigan, Evanston, General Counsel, Traffic Institute, Northwestern University.

F. Traffic Courts and Lawyers.
Hon. John M. Murtagh, Chief City Magistrate, New York City.

G. Summary.
James P. Economos, Chicago, Director, Traffic Court Program, American Bar Association.

## LADIES ENTERTAINMENT

Special luncheons, a fashion show and sightseeing tours will be conducted for the ladies.

## REGISTRATION

Advance registration is urged. Fees are $10.00 for lawyers, $2.00 for students, and no fee for wives. Registration for luncheons, banquets, tours, and other activities will be taken upon arrival. Registration information, accompanied by the fee, and hotel reservation requests should be mailed EARLY to: Convention Bureau, Hartford Chamber of Commerce, Old State House, Hartford 4, Connecticut.

**ELIZABETH McCARTHY**
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# EDITORIAL ON THE REPORT OF THE JUDICIAL SURVEY COMMISSION

This issue of the Quarterly consists mainly of House No. 2620 of 1956, the message of Governor Herter transmitting the report of the Judicial Survey Commission to the legislature. The message itself begins on the first page, the main report of the Commission begins on page 34, the supporting reports of the Commission on the various branches of its study begin on page 56 (indexed on page 55), and the drafts of legislation suggested by the Governor, and listed on pages 2 and 3 of his message, begin on page 4. A reader of House No. 2620 might find it convenient to proceed with this arrangement in mind.

There were hearings on the report before the Judiciary Committee. The central recommendation of the Commission is for an administrative office of the courts. The Supreme Judicial Court has had supervisory authority over all other courts since 1782 under G. L. Chapter 211 Section 3, but it has been regarded as involving formal proceedings by writ. The present proposal is simply to broaden the supervisory function of the court to help in meeting the administrative needs of modern courts and to provide administrative assistance to the court in connection with this administrative function, seemingly a natural one for the court which has always been entrusted with the application of all the constitutional and other substantive law of the Commonwealth.

F. W. G.

On page 34 of the report the Commission says:

"The courts have within their own grasp many of the steps necessary to improve the administration of justice. It is gratifying to note that the judges of the Superior Court are currently working in that direction."

Notice to the bar of new rules and orders appear on the following pages.

# NEW RULES AND ORDERS OF THE SUPERIOR COURT

*Notice to the Bar of March 1956*

Auditors in Motor Vehicle Cases
Engagements of Council—Amendment of Rule 57
Establishment of Non-Triable Law Docket

*Notice—December 20, 1955*

Pre-trial—Revision of Rule 58

COMMONWEALTH OF MASSACHUSETTS

*Superior Court*

## NOTICE TO THE BAR AS TO AUDITORS

Effective April 1, 1956 the following plan for reference of MOTOR VEHICLE TORT CASES to Auditors will be administered in this county by a justice assigned for the purpose.

The minimum requirements for the plan are as follows:

First. The appointments will be confined to lawyers who do not have motor tort cases and who will agree to refrain from taking or handling such cases during their period of service as auditors.

Second. The selection of auditors will be made, in the first instance, from a list of nominees furnished by the bar associations, such list to be subject to the approval of the Justices' Committee on Procedures, and subject, further, to the addition of such names as the assigned Justices in their several counties may deem advisable.

Third. Before the reference of any case to an auditor is made he will be required to send a written statement to the assigning Justice that he has no pending motor vehicle tort cases and that he will refrain from taking or handling motor vehicle tort cases as long as he continues on the list of auditors.

Fourth. When a case is referred to an auditor, notice will be sent to him, which he must return accepting or declining the appointment, with a statement, in the former instance, that he knows of no reason preventing his acceptance.

Fifth. All hearings before auditors should be conducted in an orderly and proper manner, in court houses wherever possible, and with all the dignity of court proceedings. Smoking should not be allowed.

Sixth. When a hearing before an auditor is begun is should be continued without interruption to its conclusion, unless by order of the assigning Justice.

Seventh. When a case is assigned and placed upon the auditor's list for hearing, it should be heard in the order assigned, unless

the assigning Justice should order otherwise. References to auditors not speedily heard will be discharged by the assigning Justice.

Eighth. No motion for reference of any case will be entertained until after the expiration of one year from the date of entry, excepting in Suffolk, Middlesex and Worcester Counties, where said period shall be eighteen months, except, (1) in cases where the parties agree that the auditor's findings of fact shall be final, and (2) in cases where it appears that unusual or extraordinary hardship will result from delay. Every case in which a motion for reference has been allowed shall, before the rule is issued, be placed on the next pre-trial list for pre-trial.

Ninth. The assigned Justice may in his discretion refer any motor vehicle tort case without motion to an auditor for hearing.

Tenth. In the event that facts final are agreed, the parties may name any lawyer as auditor subject to the approval of the court.

## ENGAGEMENTS OF COUNSEL

ORDERED: That the rules of this Court be and the same are hereby amended by inserting after Rule 57 the following new rule to take effect September 1, 1956:

### RULE 57A

*(Applicable to Civil Cases and to Equity Cases)*

#### Engagements of Counsel

No party shall have a right to a postponement of trial because of engagement of counsel or for the convenience of counsel or parties, but the Court will grant a postponement if counsel is actually engaged before the Supreme Judicial Court and may grant a postponement because of engagement of counsel for not more than ten days or until said engagement is concluded.

No other postponement shall be granted to the same counsel except for good cause arising subsequent to the granting of the postponement.

### Commonwealth of Massachusetts

*Suffolk, ss.* *Superior Court*

Order Establishing a Non-Triable Law Docket Applicable to All Counties Except the County of Dukes County and Nantucket.

Ordered, that on and after April 1, 1956 a part of the common law docket shall be designated as the "Non-Triable Docket."

The docket sheets of the following cases pending more than one year shall be transferred to and kept in the "Non-Triable Docket":

(1) Cases marked inactive under Rule 85;

(2) Cases wherein a military affidavit as to a party has been filed;

(3) Cases wherein further proceedings have been enjoined by order of a Court;

(4) Cases tried and decided or defaulted and awaiting final disposition where no exceptions have been alleged or where no appeals or reports to the Supreme Judicial Court are pending and parties have failed to take action necessary to reduce such cases to judgment;

(5) Cases whether tried or untried where the record shows no further action by the Court or any party for at least six months on the following:

(a) A suggestion of death.
(b) A suggestion of bankruptcy.
(c) A motion to postpone entry of judgment.
(d) A motion to vacate or revoke an order of Court.
(e) A general continuance.
(f) A trustee neither charged nor discharged on a case otherwise ripe for judgment.
(g) Lack of service on one or more defendants.
(h) A motion to stay proceedings.
(i) A motion for judgment.
(j) An auditor's report.
(k) A motion to remove a nonsuit or default allowed and not followed by a motion to restore the case to the trial list.
(l) No appearance by an absent defendant.
(m) A jury disagreement.
(n) A judgment vacated.
(o) A motion for a new trial.
(p) An order for a new trial.
(q) A motion to amend after demurrer sustained.
(r) A motion to remove an order for neither party.
(s) Cases previously ordered tried with any of the foregoing.

Transfer of such cases into the "Non-Triable Docket" shall be made by the respective Clerks on or before June 30 of each year, except in cases where it appears as of record that matters remained undecided after hearing by the Court.

The Court may from time to time order other cases placed on the "Non-Triable Docket" for cause shown.

Clerks will give notice to all counsel of record of transfer of cases to the "Non-Triable Docket" on or before September 1 in each year.

In addition to the foregoing, except as otherwise ordered by the Court, all untried jury cases on the common law docket numbered below the highest number reached for trial in the usual course of business which have not been advanced for trial and which have not been continued for trial until the next session of the Court, and all untried jury waived cases on said docket pending more than two years shall during the month of June in each year be placed in the "Non-Triable Docket" by the respective Clerks, except cases

pending on exceptions, appeals or reports to the Supreme Judicial Court.

All docket sheets of cases transferred to the "Non-Triable Docket" in accordance with the provisions of this order shall be stamped "Non-Triable Docket" with the date of transfer thereon. Cases may be restored by the Court on motions setting forth that the moving party desires trial or disposition of the case. While a case remains on the "Non-Triable Docket" no further proceedings other than entry for final disposition by dismissal or agreement may be had therein without special order of the Court.

The respective Clerks shall in July of each year transmit to the Chief Justice at Boston a report of the number of cases placed on the "Non-Triable Docket" during the preceding year ending June 30 and a report of the number of cases restored during said year.

Unless a motion to restore a case shall have been heard within two months from the filing thereof in Counties where the Court is in session for the hearing of motions and in other Counties at the next sitting for the hearing of such matters subsequent to the filing thereof, the Clerk shall, without further order, make the following entry upon said motion and upon the docket record, to wit: 'Motion to restore dismissed for want of prosecution.'

By the Court

COMMONWEALTH OF MASSACHUSETTS

*Suffolk, ss.* *Superior Court*

(Pre-Trial Call of List of Jury Cases)

NOTICE TO THE BAR

The short list of cases for trial is composed exclusively of cases which have passed the Pre-Trial call and such other cases as may be added by the Justice having direction of the lists. There will be no call of the jury list except the Pre-Trial call.

All requests for continuance or delay of trial must be made at the Pre-Trial call. After a case has once passed to the short list from the Pre-Trial call, no continuance shall be granted except for cause thereafter arising and not due to the fault of the parties or their counsel. Such requests, if made *prior to commencement of trial,* must be made to the Pre-Trial Judge.

Attorneys having cases on the short list will receive notice when their cases are assigned to trial sessions and must be ready for trial when advised by the Session Clerk that the case has been reached for trial.

The Pre-Trial call will be held in Room 223 before the Justice assigned. The list will be composed of those cases next in order at the conclusion of the December jury sessions and seasonable notice will be sent to each attorney having a case on the Pre-Trial list of the day and as nearly as possible the hour when his case will be reached.

The Pre-Trial procedures will be governed by Rule 58 which is as follows:

SUPERIOR COURT REVISED RULES OF 1954

RULE 58

(Applicable to Civil Cases at Law)

*Pre-Trial*

A Justice specially assigned therefor may establish a pre-trial list of cases and direct parties or their attorneys to attend a call of said list, at which call continuances, nonsuits or defaults may be entered and also the following matters may be considered:

(1) simplifications of issues;
(2) amendments of pleadings;
(3) stipulations of parties, admissions of facts or as to documents, records, photographs, plans and like matters which will dispense with formal proof thereof;
(4) limitation of the number of expert witnesses;
(5) reference to auditor;
(6) possibility of settlement;
(7) agreement as to damages; and
(8) such other matters as will aid in the disposal of the case.

Upon consideration of the above matters the justice shall make an appropriate order which will control the subsequent conduct of the case unless modified at the trial to prevent manifest injustice.

From the foregoing, it is apparent that litigants must be represented at the Pre-Trial call by an attorney having *full power* to act in all matters pertaining to the case. It is entirely in order for the client to be present at the Pre-Trial call.

It will likewise be necessary that the case be fully investigated as to its readiness for trial before the Pre-Trial call, in view of the rule above stated limiting continuances on the short list to causes arising after the Pre-Trial call. It is also desirable that preliminary negotiations for settlement should be had to the same extent as if the case were about to be reached for actual trial.

It should be understood that in the event of failure of parties to appear or to be properly represented at the Pre-Trial or *if the attorney should not have full power to act in all matters pertaining to the case,* the Court has the same power with respect to non-suits, defaults, or both as it has heretofore exercised when a case is reached for trial. The Court expects, however, that this power will be sparingly used because of the reasonable expectation that there will be the fullest cooperation between the bench and the bar.

The Justice having direction of the lists, may at any time suspend any of the foregoing provisions and make other and different provisions which may remain in force until adopted, modified or repealed by the Justics at a meeting.

By the Court, (Reardon, C. J.)
Thomas Dorgan,
Clerk.

December 20, 1955

## THE NEW HANDBOOK OF MASSACHUSETTS EVIDENCE BY LEACH AND McNAUGHTON

*(See p. ii above)*

Prof. W. Barton Leach and his careful work need no introduction to the profession, and the best way of commenting on the new enlarged Third Edition of the Handbook, prepared with the assistance of Prof. John T. McNaughton, seems to be to quote their own description of their work in their "Preface" as follows:—

"This Handbook was first published in 1940. The second edition was dated 1948. The present edition encompasses the authorities through June 1955—l. e., through 332 Mass. 127 NE2d, 349 US 464, 75 SCt, 99 LEd.

"Purposes of the Handbook are:

"(1) to serve as an aid to members of the bench and bar for quick reference in the trial of cases;

"(2) to serve as a means of preparation for the Massachusetts Bar Examination, and

"(3) to serve as a text for use by students in courses on Evidence in Massachusetts law schools.

"To facilitate these uses, we have done four things in this edition of the Handbook: (1) Rewritten the text to reflect the recent developments in the law. (2) Made rules easier to find, by simplifying the organization and by including a complete system of cross references. (3) Provided wide margins and paper which takes ink, for the addition of personal notes. And (4) developed a number of topics only mentioned in the earlier editions. Among the new topics are burden of proof, presumptions, binding testimony, real evidence, and rehabilitation of witnesses.

"The Handbook purports to provide, in brief compass, a reasoned, analytical statement of the Massachusetts law of Evidence, with text of significant statutes and citation of leading cases in this state, and with detailed data at those points where the law is particularly involved.

"Suggestions as to improvement of this volume will be cordially welcomed."

W. Barton Leach
John T. McNaughton

## EXTRACTS FROM THE CIRCULAR LETTER OF THE ADMINISTRATIVE COMMITTEE OF THE DISTRICT COURTS OF FEBRUARY 1, 1956

"Political Activity

"One of the problems that seems to harass the committee constantly is the participation of Justices, special justices, clerks and other court personnel in politics. Whether such participation is on the local or other governmental level it has been the opinion of the

committee through the years that such active interest should not persist. We have just experienced municipal elections in many of our cities and the annual town elections are at hand or have been held. This is also the year of our national election when partisanship may become rather bitter. We feel it is timely, therefore, to call to the attention of all court justices and other personnel the continued opinion of the committee that they should not be active politically, by taking part in any way in any of these contests. In relation thereto we are herewith setting forth the applicable canons [of Judicial Ethics] of the American Bar Association to which we fully subscribe in order that we may have before us a constant reminder of what we believe our official conduct should be.

"28. PARTISAN POLITICS

"While entitled to entertain his personal views of political questions, and while not required to surrender his rights or opinions as a citizen, it is inevitable that suspicion of being warped by political bias will attach to a judge who becomes the active promoter of the interests of one political party as against another. He should avoid making political speeches, making or soliciting payment of assessments or contributions to party funds, the public endorsement of candidates for political office and participation in party conventions.

"He should neither accept nor retain a place on any party committee nor act as party leader, nor engage generally in partisan activities."

"30. CANDIDACY FOR OFFICE

"While holding a judicial position he should not become an active candidate either at a party primary or at a general election for any office other than a judicial office. If a judge should decide to become a candidate for any office not judicial, he should resign in order that it cannot be said that he is using the power or prestige of his judicial position to promote his own candidacy or the success of his party."

"CHANGE IN CHAIRMANSHIP OF COMMITTEE

"We cannot close this letter without paying a deserving tribute to Judge Riley, who after many years as Chairman of our committee, has relinquished his duties. His constant attention to the many trying problems with which your committee deals, his tact, frankness and fair dealing have impressed the officials of our courts and the general public. Fortunately he remains on the committee to give us the benefit of his wise counsel and intuitive understanding. Judge Nash has been chosen to head the committee.

"Judge Riley's signature appears on the letter but he has not been given the opportunity of reading the above last paragraph."

"ADMINISTRATIVE COMMITTEE OF THE DISTRICT COURTS

"KENNETH L. NASH, *Chairman*

FRANK L. RILEY ERNEST E. HOBSON

LEO H. LEARY ARTHUR L. ENO"

## JUDICIAL SURVEY COMMISSION

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Samuel P. Sears, Vice-Chairman; former President of the Massachusetts Bar Association, Boston.

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John C. Dowd, John C. Dowd, Inc., Advertising Executive, Boston.

The Rev. Theodore P. Ferris, Rector of Trinity Church, Boston.

Rabbi Roland B. Gittelsohn, Rabbi of Temple Israel, Boston.

Frank W. Grinnell, Secretary of the Massachusetts Bar Association and Secretary of the Judicial Council, Boston.

Livingston Hall, Vice-Dean of Harvard Law School, Cambridge.

Edward B. Hanify, Attorney, Boston.

John R. Herbert, Editor of the Quincy Patriot Ledger, Chairman of Massachusetts Newspaper Information Committee, Quincy.

Kenneth J. Kelley, Secretary-Treasurer and Legislative Agent of the Massachusetts Federation of Labor, Boston.

Valentine P. Murphy, Member of Executive Board of Mass. State C.I.O., Industrial Union Council; President and Business Agent of Utility Workers Union, Boston.

Edward L. O'Brien, President of the Hampshire County Bar Association, Northampton.

Paul B. Sargent, Attorney, Boston.

Joseph Schneider, President of the Massachusetts Bar Association, Brookline.

Samuel Seder, Past President of the Worcester County Bar Association, Worcester.

Lawrence B. Urbano, Attorney, Boston.

Most Rev. John J. Wright, Bishop of Worcester.

# HOUSE . . . . No. 2620

## The Commonwealth of Massachusetts

EXECUTIVE DEPARTMENT
STATE HOUSE, BOSTON, February 20, 1956.

*To the Honorable Senate and House of Representatives.*

I hereby transmit to you the report of the Judicial Survey Commission, together with the reports on separate topics, both of which I believe should be a permanent record of the General Court. As you know, this Commission was appointed by me in December, 1954 on the recommendation of the Massachusetts Bar Association to make a study of the administration of justice in all of the courts of the Commonwealth.

I hardly need to remind you that most of the proposals of this Commission of distinguished citizens are not new. Many have been proposed by the Judicial Council, whose recommendations are too often ignored, and others by legislative and other Commissions whose efforts have been wasted largely because of those who chose to put self-interest, outmoded custom or inertia ahead of progress, and partly because of honest differences of belief as to the desirability of changes in the judicial system.

The Massachusetts judicial system is respected in the United States for the pre-eminence of its Supreme Judicial Court, for the simplicity of the organization of its courts, and for the integrity of its bench resulting from the appointment of judges for life, thus removing them from the partisan pressures of election contests. It has received criticism primarily for its part-time judges in the lower courts and for delays in affording jury trials to litigants, the latter a complaint that is not uncommon in other states with large populations. However, as the report clearly indicates, there are other fields in which improvement can and should be made.

The report which I transmit to you plainly propounds two alternatives. The first, to restore our state's leadership in the field of the administration of justice; the second, to wait until further deterioration forces ill-considered reforms upon us or causes a radical change in the concept of administration of law, particularly in the field of motor vehicle accident cases.

The issues presented by this report transcend partisan politics and the pleas of special interests. I urge you to consider it in that light and enact legislation to carry out the recommendations of the Commission.

I have attached hereto and recommend the following legislation to implement the report of the Judicial Survey Commission:

1. For an Administrator of the Courts. The draft act appears in the attached report.

2. For the granting of full rule-making power to the Supreme Judicial Court. The draft act appears in the attached report.

3. To give the Superior Court the power to prescribe forms of pleading in law cases, as recommended in the Thirty-first Report of the Judicial Council.

4. For the establishment of a fifteen dollar jury fee, as recommended in the Thirty-first Report of the Judicial Council.

5. For limited oral depositions before trial in the Superior Court, as recommended in the Thirtieth Report of the Judicial Council.

6. For continuance of the present temporary act permitting District Court Justices to sit in the Superior Court on misdemeanor and motor vehicle tort cases with certain amendments, as recommended in the Thirty-first Report of the Judicial Council.

7. For the extension of full-time judicial services in the District Courts. The proposed act attached hereto is basically the same as Senate Bill No. 300 of 1955 except for changes directed to making the District Courts of Suffolk County eventually a part of the Boston Municipal Court as recommended by the Commission.

8. For giving the Administrative Committee of the Probate Courts the power to prescribe and enforce uniform practices and procedures. The draft act appears in the attached report.

9. For provision for pensions for judges appointed after July 31, 1956 only if they resign within thirty days after having completed ten years service and having reached the age of seventy. The proposed act attached hereto is in accordance with the recommendation of a majority of the Commission.

I recommend also for your consideration legislation to enact into law the other recommendations of the Judicial Survey Commission not covered by the attached legislation.

CHRISTIAN A. HERTER,
*Governor of the Commonwealth.*

# The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Fifty-Six.

AN ACT PROVIDING FOR ADMINISTRATION OF THE COURTS AND AN ADMINISTRATIVE OFFICE OF THE COURTS.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

SECTION 1. Section 3 of chapter 211 of the General Laws, as appearing in the Tercentenary Edition, is hereby amended by adding at the end of said section the following paragraph: —

In addition to the foregoing, the supreme judicial court shall also have general superintendence and direction of the administration of all courts of inferior jurisdiction, including, without limitation, the prompt hearing and disposition of matters pending therein, and the functions set forth in section three C of this chapter; and it may issue such writs, summonses and other processes and such orders, directions and rules as may be necessary or desirable for the furtherance of justice, the regular execution of the laws, the improvement of the administration of such courts, and the securing of their proper and efficient administration. Nothing herein contained shall affect existing law governing the selection of officers of the courts, or limit the existing authority of the officers thereof to appoint administrative personnel.

SECTION 2. Said chapter 211 is hereby further amended by inserting after section 3 the following sections: —

*Section 3A.* There shall be an administrative office of the courts with an administrator appointed by the supreme judicial court to serve at the pleasure thereof. The administrator shall be a member of the Massachu-

setts bar and his compensation shall be at the rate of fifteen thousand dollars per annum. The administrative office of the courts shall be provided with suitable quarters in the Suffolk county courthouse in the city of Boston.

*Section 3B.* The administrator, with the approval of the supreme judicial court, shall appoint and fix the salaries of such employees as may be necessary to perform the duties vested in him by this act. The administrator and these employees shall not engage directly or indirectly in the practice of law.

*Section 3C.* The administrator, subject to the direction and supervision of the supreme judicial court, shall perform the following functions and shall make reports and recommendations to the supreme judicial court relative thereto: —

(*a*) Examination of the administrative methods, systems and activities of the judges, clerks, registers, recorders, stenographic reporters and employees of all courts of the commonwealth and the offices connected therewith.

(*b*) Examination of the state of the dockets of the courts, securing information as to their needs for assistance, if any, and preparation of statistical data and reports of the business of the courts.

(*c*) Examination of the arrangements for accommodations for the use of the courts and the clerks, registers and recorders thereof, and the arrangements for the purchase, exchange, transfer and distribution of equipment and supplies therefor.

(*d*) Investigation and collection of statistical data relating to the expenditures of public moneys, state, county and municipal for the operation and maintenance of the courts and the offices connected therewith.

(*e*) Examination, from time to time, of the operation of the courts and investigation of complaints with respect thereto.

(*f*) Attendance to such other matters as may be assigned by the supreme judicial court.

*Section 3D.* All judges, clerks, registers, recorders and stenographic reporters and their assistants and employees, the administrative committee of the district courts, the administrative committee of the probate courts, the board of probation, the commissioner of probation and all probation officers shall comply with any and all requests made by the administrator for information and statistical data bearing on the state of the dockets of the courts and such other information as may reflect their activities and the business transacted by them, and the expenditure of public moneys for the courts and the offices connected therewith. All district attorneys shall comply with any and all requests made by the administrator for information and statistical data bearing on the operation of their offices.

*Section 3E.* The administrator shall submit annually as of June thirtieth to the supreme judicial court a report of the activities of the administrative office of the courts together withhis recommendations, which report shall be a matter of public record and shall be printed as a public document.

*Section 3F.* The supreme judicial court may provide by rule or special order for the holding of conferences of the judges of the various courts and of invited members of the bar, for the consideration of matters relating to judicial business, the improvement of the judicial system and the administration of justice. The administrator shall act as secretary of these conferences.

SECTION 3. Chapter 221 of the General Laws is hereby amended by striking out section 24.

# The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Fifty-Six.

AN ACT TO EXTEND THE RULE-MAKING POWER OF THE SUPREME JUDICIAL COURT.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

SECTION 1. Section 3 of chapter 213 of the General Laws, as most recently amended by chapter 582 of the acts of 1945, is hereby further amended by adding at the end thereof the following five paragraphs: —

The supreme judicial court shall have the power to prescribe, by general rules, the forms of process, writs, pleadings and motions, and the rules of pleading, practice and procedure, in civil and criminal cases, and proceedings in all the courts of the commonwealth.

Such rules shall not abridge, enlarge or modify any substantive right, and shall preserve the rights of all persons as declared by the Constitution of the Commonwealth, including the right of trial by jury as declared in Articles XII and XV thereof.

Before any such rules are adopted the supreme judicial court shall appoint an advisory committee consisting of representatives of the relevant courts, and at least eight members of the bar of the commonwealth, to assist the court in considering and preparing such rules as it may adopt. Before any such rule is adopted by it, the supreme judicial court shall make public copies of the proposed rule for the consideration of the bench and bar and people of the commonwealth, and give due consideration to such suggestions as they may submit to it. No rule adopted pursuant to this section shall be effective less than sixty days after its promulgation by the court.

Nothing in this section shall in any way supersede or repeal any rule heretofore prescribed by any court of the commonwealth, or limit the power of any such court to make and amend its rules, except in so far as they are in conflict with general rules prescribed by the supreme judicial court under this section.

All present laws relating to the forms of process, writs, pleadings and motions, and to pleading, practice and procedure, shall be effective as rules of court until modified or superseded by subsequent rule of the supreme judicial court, and upon the effective date of any rule adopted pursuant to this section such laws, in so far as they are in conflict therewith, shall thereafter be of no further force and effect.

SECTION 2. This act shall not abridge the right of the general court to enact, modify or repeal any statute, or modify or repeal any rule of the supreme judicial court adopted pursuant thereto.

# The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Fifty-Six.

AN ACT RELATIVE TO FORM OF PLEADINGS IN LAW CASES IN THE SUPERIOR COURT.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

SECTION 1. Section 147 of chapter 231 of the General Laws is hereby amended by striking out the first paragraph and inserting in place thereof the following paragraph: —

*Section 147.* The following forms of pleadings, or any other suitable forms, may be used for the purposes therein indicated, and similar forms with the necessary changes may be used for other like purposes, subject to such changes as the courts shall, respectively, make and promulgate for use in such courts, and subject to the final control of the supreme judicial court, which may by general rule regulate such changes in all the courts of the commonwealth.

SECTION 2. This act shall take effect on September first in the current year.

# The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Fifty-Six.

AN ACT ESTABLISHING A MODERATE JURY FEE.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

SECTION 1. Section 4 of chapter 262 of the General Laws, as most recently amended by chapter 624 of the acts of 1954, is hereby further amended by inserting at the end thereof the following paragraph: —

For filing a claim for jury trial or a motion to frame issues in the superior court for jury trial or for the entry in the superior court of such issues framed by the land court or by a probate court, and transmitted to the superior court, for trial, fifteen dollars.

SECTION 2. This act shall take effect on September first in the current year.

# The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Fifty-Six.

AN ACT ESTABLISHING THE TAKING OF CERTAIN ORAL DEPOSITIONS BEFORE TRIAL IN THE SUPERIOR COURT.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

Chapter 231 of the General Laws is hereby amended by inserting after section 68 the following new section: —

*Section 68A.* Any party in the superior court, after the entry of a writ or the filing of a bill or petition may examine orally any other party, in the city or town within the commonwealth of the residence or usual place of business of the party to be examined, for the discovery of facts and documents admissible in evidence at the trial of the case. The word "party" in this act shall be deemed to include parties intervening or otherwise admitted after the beginning of a suit. Such examination may be used at the trial by the party taking the same or by any other party on paying the cost of taking the same unless the party examined is present at the trial of the case. Nothing herein shall be held to prevent the use of such examination as a declaration or admission of a party, if material, whether or not the party examined is present at the trial, or the use of such examination in connection with cross-examination of such party. Sections sixty-five, sixty-six and sixty-seven of chapter two hundred and thirty-one of the General Laws shall apply under this act.

In order to make such examination any party may apply to a justice of the peace or notary public, who shall issue a notice to the party to be examined and all other parties to appear before said justice or notary at the time and place appointed for such examination. An

attested copy of such notice shall be sent by registered mail to the party to be examined and to all attorneys of record of said party and of all other parties, not less than ten days before the date set for the examination so that they may attend.

The party examined shall be sworn or affirmed, and his examination shall be taken in the same manner and subject to the same rules as if taken before a court. The court shall at all times have full control of the examination and may impose reasonable conditions as to its conduct and scope.

The party requesting the examination shall be allowed first to examine on all points material to the cause in which the examination is made. The party examined or his attorney may then examine in like manner, after which any party may examine further.

The examination shall be taken by a stenographer appointed by the justice or notary on the request of either party at his expense. Said stenographer shall be sworn by the justice or notary to transcribe faithfully the testimony, and his transcript shall be certified by the justice or notary. In case such request is not made the deposition shall be written by the justice, notary or commissioner or by a disinterested person, in the presence and under the direction of the justice, notary or commissioner. The examination or the stenographer's transcript thereof shall be carefully read to or by the party examined and then subscribed by him.

The examination shall be delivered by the justice, notary or commissioner to the court, before which the cause is pending, or shall be enclosed and sealed by him and directed to it, and shall remain sealed until opened by it. Copies of the deposition, however, may be furnished by the justice, notary or commissioner to any party.

Nothing in this act contained shall prevent either party calling and examining verbally at the trial of the action any party in the same manner as though his testimony had not been taken in writing.

If a party after due notice fails without reasonable cause to attend and submit himself to examination under this act, the court may make and enter such order, judgment or decree as justice requires.

No one without leave of court shall both examine any other party orally under this act and interrogate him in writing under General Laws, chapter two hundred and thirty-one, sections sixty-one to sixty-seven, and no party shall be required to attend and submit himself to examination more than once in the same case except by order of court.

A party in the superior court may examine orally an agent, servant or employee of an adverse party in the same manner and under the same conditions as provided for the examination of a party in the foregoing sub-sections. The examination of no more than one such agent, servant or employee may be taken in any case except by order of court. A person subject to examination under this sub-section may be summoned and compelled to testify in like manner and under the same penalties as are provided for a witness before the court.

# The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Fifty-Six.

AN ACT AUTHORIZING JUSTICES OF DISTRICT COURTS TO SIT IN THE SUPERIOR COURT ON MOTOR VEHICLE TORT ACTIONS.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

SECTION 1. Chapter 212 of the General Laws is hereby amended by striking out section 14B, inserted by section 1 of chapter 668 of the acts of 1954, and inserting in place thereof the following section: —

*Section 14B.* A justice of a district court shall, at the written request of the chief justice of the superior court, sit in the superior court at the trial or disposition with or without a jury in any part of the commonwealth of any motor vehicle tort action, or of any violation of a by-law, order, ordinance, rule or regulation made by a city or town or public officer or of any misdemeanor except conspiracy or libel, and during the continuance of such request shall have and exercise all the powers and duties which a justice of the superior court has and may exercise in the trial and disposition of such cases.

No justice so sitting shall act in a case in which he has either sat or held an inquest in the district court or otherwise has an interest. No justice of the district court shall so sit in the superior court, as aforesaid, unless his name appears on a list submitted to the chief justice of the superior court for the purpose of this section by the chief justice of the municipal court of the city of Boston, if he is a justice of that court, or by the administrative committee of the district courts, if he is a justice of any other district court.

In the event that by reason of his physical or mental disability, death, resignation, retirement, or removal any

justice presiding at a trial pursuant to this section shall fail to sign or return exceptions taken at the trial, to make a report after he has reserved the case for report to the supreme judicial court, to enter a verdict or finding after reserving leave, with the assent of the jury, to do so, to set aside the verdict in a civil action and order a new trial, for a cause for which a new trial may by law be granted, or otherwise to exercise any of the powers and duties granted to him by this section in the disposition of such case, the chief justice of the superior court may assign any other justice authorized to sit in the superior court pursuant to this act, or any justice of the superior court, to have and exercise such powers and duties.

SECTION 2. This act shall not be operative after September first, nineteen hundred and sixty-one, except that any justice sitting in the superior court pursuant to this act at the trial of any case prior to such date, shall continue thereafter, upon assignment by the chief justice of the superior court, to have and exercise all the powers and duties granted to him by this act in the disposition of such case.

# The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Fifty-Six.

AN ACT PROVIDING FOR THE REORGANIZATION OF THE DISTRICT COURTS AND THE EXTENSION OF FULL-TIME JUDICIAL SERVICE.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

SECTION 1. Chapter 218 of the General Laws is amended by striking out section 6, as most recently amended by chapter 560 of the acts of 1952, and inserting in place thereof the following three sections: —

*Section 6.* The justices of the following district courts shall be full-time justices: — district court of central Berkshire, second district court of Bristol, third district court of Bristol, district court of Lawrence, first district court of Essex, district court of southern Essex, district court of Franklin, district court of Springfield, district court of Holyoke, district court of Hampshire, first district court of eastern Middlesex, second district court of eastern Middlesex, third district court of eastern Middlesex, first district court of northern Middlesex, first district court of southern Middlesex, district court of Lowell, district court of Somerville, district court of Newton, municipal court of Brookline, district court of northern Norfolk, district court of East Norfolk, district court of Brockton, municipal court of the Roxbury district, central district court of Worcester, first district court of northern Worcester, first district court of southern Worcester and district court of Fitchburg. One additional full-time justice of a district court shall be appointed in each of the counties of Berkshire, Bristol, Essex, Middlesex, Norfolk and Plymouth, and two in the county of Hampden, as provided in this sec-

tion. One of such additional full-time justices shall be appointed for each twelve thousand dollars of the total salaries of justices who are not full-time justices in all the various district courts of the commonwealth in which vacancies in the office of justice have occurred, other than in the district courts in the counties of Suffolk, Barnstable, Dukes county and Nantucket. Such appointment as full-time justice shall be made only to a district court in which there is a vacancy, and which is located in a county which does not already have all the full-time justices authorized in its district courts by this section. The administrative committee of the district courts shall designate to which of such district courts the additional full-time justice shall be appointed and in so doing shall designate the district court where, in its opinion, the greatest need for appointment of a full-time justice exists, considering the caseload of the various courts, the available justices and special justices in the various counties, and the public convenience.

A vacancy occuring in the office of justice of a district court, other than a district court in the county of Suffolk, designated as a full-time justice by this section, or by the administrative committee pursuant to this section, shall be filled by appointment of another full-time justice of such court.

The first district court of Barnstable, second district court of Barnstable, district court of Dukes county and district court of Nantucket shall each consist of one justice and one special justice; and vacancies in the offices of justices and special justices of such courts shall be filled by appointment. There shall be two justices in the central district court of Worcester, district court of Springfield, first district court of eastern Middlesex, third district court of eastern Middlesex and municipal court of the Roxbury district. In any district court in which there shall be more than one justice, the senior justice shall be the first justice of the court. Citations, orders of notice, writs, executions and all other processes

issued by the clerk of the court shall bear the teste of the first justice thereof. No vacancy in the office of justice or special justice in any of the district courts other than the municipal court of the city of Boston shall be filled except as specifically provided in this section.

*Section 6A.* Special justices of the district courts other than the municipal court of the city of Boston shall be paid by the county in which they sit at the rate by the day at which special justices were paid in the same court on December thirty-first of the year nineteen hundred and fifty-four. Special justices of the Boston juvenile court shall be paid by the county fifteen dollars for each day's services, or at the rate by the day of the salary of the justice of the same court, whichever is the greater amount. For each day's service so paid for in excess of thirty days in any court in any one year there shall be deducted by the county treasurer from the salary of the justice who absents himself from said court one day's compensation at the rate by the day of the salary of said justice, except for services of the special justice in holding simultaneous sessions; provided, however, that if a justice is absent, due to his illness or physical disability, for a period not exceeding thirty days in any year, in addition to said thirty days, he shall be deemed to be on sick leave, and no such deduction shall be made; such thirty-day sick leave or any portion thereof not used in any year may be accumulated, but shall in any event, not exceed ninety days in any consecutive three-year period; and provided, further, that if a justice is absent due to an assignment on or by the administrative committee, no such deduction shall be made therefor.

*Section 6B.* Except in the counties of Suffolk, Barnstable, Dukes county and Nantucket, whenever there shall be a vacancy in the office of justice of a district court, the administrative committee of the district courts shall assign full-time justices and special justices to hold sittings of the court in that district. Regular sittings shall be held in that court as frequently as the

volume of business and the public convenience shall require. Whenever practicable, an additional criminal sitting shall be held in that court at the request of the clerk, if he knows that one or more defendants remain in custody subject to the jurisdiction of the court after having been arrested before nine o'clock in the morning of a business day on which no regular sitting of the court in that district will be held. Whenever this is not practicable, the administrative committee shall by rule provide for the persons having custody of any such defendant to remove him to another district court scheduled to hold an earlier sitting. This other court shall thereupon have jurisdiction to hear and dispose of the case. The clerk of the court from which any such defendant was removed shall report every such removal to the administrative committee without undue delay.

Whenever there shall be a vacancy in the office of justice of a district court in the county of Suffolk, the chief justice of the municipal court of the city of Boston shall assign justices of the municipal court of the city of Boston, and special justices of any district court, to hold regular sittings of the court in that district. The powers and duties of the justice of that court shall thereafter be exercised by the chief justice and associate justices of the municipal court of the city of Boston in the same manner that such powers and duties are exercised by them in their own court, and the administrative committee of the district courts shall have no further powers and duties with regard to such court.

SECTION 2. Said chapter 218 is hereby further amended by striking out section 50, as most recently amended by section 1 of chapter 334 of the acts of 1928, and inserting in place thereof the following section: —

*Section 50.* The municipal court of the city of Boston shall consist of one chief justice, eight associate justices, and six additional associate justices to be appointed as provided by this section. One of such additional asso-

ciate justices shall be appointed for each twelve thousand dollars of total salaries of justices, who are not full-time justices, of the other district courts in the county of Suffolk in which vacancies in the office of justice have occurred, until a total of four such additional associate justices have been appointed. One additional associate justice shall also be appointed for each vacancy in the office of justice of the municipal court of the Roxbury district which shall occur. No such vacancy occurring in the office of justice of any district court in the county of Suffolk shall be filled by appointment of a justice of any such district court.

Said court may from time to time make rules, in all cases not expressly provided for by law, for regulating the practice and conducting the business in said court and in all other district courts in the county of Suffolk in which vacancies in the office of justice have occurred, and in the municipal court of the Roxbury district.

SECTION 3. Said chapter 218 is hereby further amended by striking out section 77A, as most recently amended by section 1 of chapter 603 of the acts of 1952, and inserting in place thereof the following section: —

*Section 77A.* The salaries of the full-time justices of the district courts other than the district courts in the county of Suffolk shall be twelve thousand dollars each. Such justices, and the clerks of the district court of Springfield, central district court of Worcester, district court of East Norfolk, first district court of eastern Middlesex and third district court of eastern Middlesex, shall devote their entire time during ordinary business hours to their respective duties and shall not, directly or indirectly, engage in the practice of law. Each of said justices shall sit in his own court. In addition, each of said justices shall perform such other duties as district court justice as the administrative committee of the district courts shall assign to him, including sitting on all or specified types of cases in any other

district court, and assignment to any other district court in which the office of justice is vacant with all the powers and duties of a justice of such other district court. Whenever a full-time justice of a district court in one county shall sit by assignment of the administrative committee in a district court in another county, such other county shall reimburse the first county on a pro rata basis for the justice's salary for the time that he sits in such other county, and for his expenses thereby incurred.

The salaries of the full-time justices of the municipal court of the Roxbury district shall be fifteen thousand dollars each. The justices and clerk of said court shall devote their entire time during ordinary business hours to their respective duties and shall not, directly or indirectly, engage in the practice of law. The chief justice of the municipal court of the city of Boston shall have power from time to time to make assignments for the attendance of the justices and special justices of the municipal court of the Roxbury district at the several times and places appointed for holding said court. When in his opinion it shall be necessary or convenient, said chief justice shall also have such power to make assignments for such attendance of the justices and special justices in the municipal court of the city of Boston, and to make assignments for the attendance of the justices and special justices of the municipal court of the Roxbury district at the several times and places appointed for holding the municipal court of the city of Boston. During the continuance of such assignment, any such justice or special justice of either court in attendance at the other court shall have and exercise all the powers and duties of a justice of the other court. The administrative committee of the district courts shall have no powers or duties with reference to the municipal court of the Roxbury district.

SECTION 4. Chapter 218 of the General Laws is hereby amended by striking out section 78, as most

recently amended by chapter 741 of the acts of 1955, and inserting in place thereof the following section: —

*Section 78.* The salary of the justice of the municipal court of the Dorchester district shall be eighty-seven hundred dollars. The salary of the justice of the district court of Chelsea shall be seventy-five hundred and forty-five dollars. The salary of the justice of each of the following district courts shall be seventy-four hundred dollars: East Boston district court, municipal court of the West Roxbury district, municipal court of the South Boston district, municipal court of the Charlestown district, municipal court of the Brighton district; the salary of the justice of each of the following district courts shall be sixty-six hundred dollars: fourth district court of eastern Middlesex, central discourt of northern Essex; the salary of the justice of each of the following district courts shall be six thousand dollars: second district court of Plymouth, first district court of Bristol; the salary of the justice of each of the following district courts shall be fifty-five hundred dollars: district court of eastern Essex, fourth district court of Bristol, district court of Newburyport, district court of western Norfolk, district court of Chicopee, district court of central Middlesex; the salary of the justice of each of the following district courts shall be forty-nine hundred dollars: first district court of Barnstable, fourth district court of Plymouth, district court of western Hampden, district court of Marlborough, third district court of Plymouth; the salary of the justice of each of the following district courts shall be forty-six hundred and forty dollars: district court of Leominster, district court of northern Berkshire, district court of Natick, district court of southern Norfolk, district court of western Worcester, third district court of southern Worcester, district court of eastern Hampden, second district court of eastern Worcester, second district court of Essex, second district court of southern Worcester, fourth district court of Berkshire, first district court of eastern Worcester,

district court of eastern Hampshire; the salary of the justice of each of the following district courts shall be thirty-nine hundred dollars: second district court of Barnstable, district court of Lee, third district court of Essex, district court of Winchendon, district court of eastern Franklin, district court of Williamstown; the salary of the justice of the district court of southern Berkshire shall be forty-six hundred and forty dollars; the salary of the justice of the district court of Peabody shall be fifty-five hundred dollars. The salary of the justice of the district court of Dukes county shall be forty-three hundred and forty dollars and the salary of the justice of the district court of Nantucket shall be thirty-five hundred dollars.

SECTION 5. Notwithstanding any provisions of this act to the contrary the provisions of sections seventy-seven and seventy-eight of chapter two hundred and eighteen of the General Laws in effect immediately prior to the effective date of chapter seven hundred and sixty-eight of the acts of nineteen hundred and fifty-one, shall remain in effect and apply to appointments to the offices referred to therein which are made on or after the effective date of this act.

SECTION 6. Said chapter 218 is hereby further amended by striking out section 40, as most recently amended by section 1 of chapter 398 of the acts of 1948, and inserting in place thereof the following two sections: —

*Section 40.* District courts, except the municipal court of the city of Boston, shall be held by the respective justices thereof, or in case of a vacancy therein, by the justices assigned to have and exercise all the powers and duties of the respective justices thereof by the administrative committee under section forty A. Upon request of the justice, either special justice may hold the court and have and exercise all the powers and duties of the justice or hold a second or third session thereof,

and two or more simultaneous sessions may be held. In case of illness, absence or other disability on the part of the justice, the special justice holding the senior commission shall, if no request has been made as aforesaid, have and exercise all the powers and duties of the justice. In case of a vacancy in the office of justice, the special justice holding the senior commission shall, if no request has been made as aforesaid, have and exercise all the powers and duties of the justice until such time as a justice may be assigned by the administrative committee under section forty A. Upon the death, resignation, absence or disability of the justice and special justices of a district court, except the municipal court of the city of Boston, a justice or special justice of any other district court, at the request of the clerk, may for the time being, have and exercise all the powers and duties of the justice until such time as a justice may be assigned by the administrative committee under section forty A, or by the chief justice of the municipal court of the city of Boston under section seventy-seven A.

Justices of district courts, except the municipal court of the city of Boston, may perform each other's duties when necessary or convenient, and special justices of district courts, including the municipal court of the city of Boston, may perform each other's duties when necessary or convenient; provided, that no special justice of a district court other than of the municipal court of the city of Boston shall sit in said municipal court except upon the request of the chief justice thereof. When a special justice holds the court or a session thereof or an inquest, or certifies a bill of costs to a county, city or town treasurer, that fact, and the fact which gave him jurisdiction, shall be entered upon the general records of the court, but need not be stated in the record of any case heard by him.

Except in the district courts in the counties of Suffolk, Barnstable, Dukes county and Nantucket, no justice or special justice other than a full-time justice shall hear and determine any civil cases other than supplementary

proceedings, summary proceedings, small claims and proceedings relating to juveniles and insane persons in any district court without the authorization of the administrative committee of the district courts. The administrative committee may give such authorization in specified district courts as the public convenience may require, and may give such authorization by general rule applicable whenever full-time justices assigned to hear such civil cases are absent or otherwise unable to sit.

*Section 40A.* Except in the county of Suffolk, whenever a vacancy in the office of justice of a district court shall exist which is not filled under section six, the administrative committee of the district courts shall assign a full-time justice of another district court to have and exercise all the powers and duties of a justice of such district court. Such assignment may be changed by the administrative committee, and may also be extended to more than one such justice. Such assignment shall not prevent the counting of the salary of the former incumbent of the district court in determining when another full-time justice is to be appointed to such court or to another district court under section six.

SECTION 7. The first paragraph of section 43A of said chapter 218, as amended by chapter 101 of the acts of 1943, is hereby further amended by adding at the end the following sentence: — The administrative committee may from time to time report to the governor and to the general court its recommendations, with drafts of legislation necessary to carry such recommendations into effect, relative to any matters affecting the administration of the district courts.

SECTION 8. Section 15 of said chapter 218, as most recently amended by section 1 of chapter 460 of the acts of 1947, is hereby further amended by inserting after the first paragraph the following paragraph: —

Where a full-time justice of a district court is assigned to another court by the administrative committee of the district courts to hear and determine any civil cases, the administrative committee shall prescribe the times for holding such civil trials in said other court except where such times are established by law.

SECTION 9. Said chapter 218 is hereby further amended by striking out sections 79 and 80.

SECTION 10. Section 81 of said chapter 218, as amended by section 1 of chapter 296 of the acts of 1939, is hereby further amended by adding at the end of the first sentence the following words: — ; and provided, further, that the full-time district court justices shall quarterly receive from their respective counties, upon the certificate of the administrative committee, the amount of the expense incurred by them in the discharge of their duties assigned to them outside their own courts.

SECTION 11. Said chapter 218 is hereby further amended by striking out section 82.

SECTION 12. The first sentence of section 44 of said chapter 218 is hereby amended by inserting after the word "teste" in line 6 as appearing in the Tercentenary Edition, the following words: — of said chief justice when the vacancy has occurred in the county of Suffolk, or of a justice assigned to such court by the administrative committee of the district courts under section forty A of this chapter, if there be one, and if not they shall bear teste, — so as to read as follows: — Processes issuing from district courts shall be under the seal of the court, signed by the clerk or an assistant clerk or temporary clerk or temporary assistant clerk, and shall bear teste of the justice, or in the municipal court of the city of Boston, the chief justice, unless he is a party or unless his office is vacant, and in such cases they shall bear teste of said chief justice when the vacancy has

occurred in the county of Suffolk, or of a justice assigned to such court by the administrative committee of the district courts under said section forty A if there be one, and if not, they shall bear teste of the special justice who holds the senior commission or the senior associate justice.

SECTION 13. Section 65B of chapter 32 of the General Laws, as most recently amended by chapter 398 of the acts of 1943, is hereby further amended by inserting after the word "resignation", in line 10, the words: — or during the period of ten years next preceding December thirty-first of the year nineteen hundred and fifty-five, — so as to read as follows: — *Section 65B.* A special justice of a district court, including the municipal court of the city of Boston, who shall be retired under Article LVIII of the Amendments to the Constitution, or a special justice thereof sixty-five years of age or over who shall resign his office, after in either case having served as a special justice for at least ten years, shall be entitled to receive a pension for life at an annual rate equal to three fourths of his average yearly earnings as special justice during the period of ten years next preceding such retirement or resignation or during the period of ten years next preceding December thirty-first of the year nineteen hundred and fifty-five or at an annual rate equal to three fourths of his average yearly earnings as special justice during the entire period of his service in said office, whichever is the higher rate, but not exceeding in any event an annual rate equal to three fourths of the annual rate of salary of the justice of his court or, in the case of the municipal court of the city of Boston, three fourths of the annual rate of salary of an associate justice of said court, payable from the same source and in the same manner as the salary of such justice or associate justice, as the case may be.

SECTION 14. Chapter 35 of the General Laws is amended by striking out section 49, as most recently

amended by section 2 of chapter 611 of the acts of 1951, and inserting in place thereof the following section: —

*Section 49.* Every office and position whereof the salary is wholly payable from the treasury of one or more counties, or from funds administered by and through county officials, including the officer described in the first sentence of section seventy-six of chapter two hundred and twenty-one, shall be classified by the board in the manner provided by sections forty-eight to fifty-six, inclusive, and every such office and position, now existing or hereafter established, shall be allocated by the board to its proper place in such classification, excluding the offices of county commissioners, the clerk and assistant clerks of the superior court for civil business in the county of Suffolk, the clerk and assistant clerks of the superior court for criminal business in the county of Suffolk, clerks and assistant clerks of the municipal court of the city of Boston, clerks and assistant clerks of the courts other than the clerks and assistant clerks of district courts, and excluding the assistant clerk and second assistant clerk of the supreme judicial court for the county of Suffolk, the register of deeds and assistant registers of deeds for the county of Suffolk, official stenographers, additional stenographers and temporary stenographers of the superior court in the county of Suffolk, justices and special justices of the district courts, the messenger of the superior court in the county of Suffolk, the secretary and assistant secretary of the municipal court of the city of Boston, and excluding other offices and positions filled by appointment of the governor with the advice and consent of the council, court officers appointed in Suffolk county under section seventy of said chapter two hundred and twenty-one, court officers in attendance upon the municipal court of the city of Boston, court officers in attendance upon the probate court in the county of Essex and probation officers. Offices and positions in the service of any department, board, school or hospital principally sup-

ported by the funds of the county or counties, or in the service of a hospital district established under sections seventy-eight to ninety-one, inclusive, of chapter one hundred and eleven, shall likewise be subject to classification as aforesaid. The word "salary", as used in this section, shall include compensation, however payable; but nothing in sections forty-eight to fifty-six, inclusive, and nothing done under authority thereof, shall prevent any person from continuing to receive from a county such compensation as is fixed under authority of other provisions of law or as is expressly established by law.

SECTION 15. Notwithstanding any other provisions of law, the salary in force on December thirty-first, nineteen hundred and fifty-four, of each of the clerks and assistant clerks of district courts who are, by the previous section of this act, first made subject to the provisions of section forty-nine of chapter thirty-five of the General Laws, shall continue in force until his office or position is classified as provided in said section forty-nine, and shall not be reduced by such classification so long as he shall hold such office or position.

SECTION 16. Except in the district courts in the counties of Barnstable, Dukes county and Nantucket, no vacancy in the office of special justice shall be filled. This act shall not affect the tenure of office of any justice or special justice in office when it shall take effect. So far as the provisions of this act are the same as those of previous law, they shall be deemed to be a continuation thereof.

SECTION 17. This act shall take effect on October first, nineteen hundred and fifty-six, except that the provisions contained in section one of this act limiting the filling of vacancies in certain district courts shall take effect on the thirtieth day next after the earliest day on which it has the force of a law conformably to the constitution.

# The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Fifty-Six.

AN ACT PROVIDING FOR INCREASED AUTHORITY FOR THE ADMINISTRATIVE COMMITTEE OF THE PROBATE COURTS.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

Chapter 215 of the General Laws, as most recently amended by chapter 330 of the acts of 1934, is hereby further amended by striking out section 30A and inserting in place thereof the following section: —

*Section 30A.* There shall be an administrative committee of the probate courts, hereinafter called the committee, which shall consist of three judges thereof, assigned to service thereon by the chief justice of the supreme judicial court for such period of time as he may deem advisable. The committee shall be authorized to visit any probate court, as a committee or by subcommittee, to require uniform practice and procedure, to prescribe forms and records and the keeping thereof, and shall have general powers of superintendence over all the probate courts, their registers, assistant registers and other officers and clerks, but except as otherwise provided by law, shall have no power to appoint any such officers. The committee may regulate the assignment of the probate judges in each county, the sessions and sittings of the judges, the time and places for holding such sessions and sittings, and may require such records to be kept as may generally assist in the determination of the nature and volume and the time required to complete all the work of such probate courts. To promote co-ordination in the administration of the probate courts the committee may from time to time call conferences of any or all the judges thereof, or of other

officials connected therewith, and the traveling expenses of such judges or officials for attending such conferences, and also the necessary expenses of the members of the committee incurred in the performance of their duties as aforesaid, shall, subject to the approval of the governor and council be paid from the state treasury. The committee shall from time to time establish forms for annual reports of the work of the several probate courts and registries of probate; and the several registries of probate shall annually, on or before October first, prepare and file with the committee uniform reports of the work of said courts and registries during the preceding court year.

# The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Fifty-Six.

AN ACT TO PROVIDE FOR THE RETIREMENT OF JUDGES APPOINTED AFTER JULY 31, 1956.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

Section 65A of chapter 32 of the General Laws, as most recently amended by chapter 775 of the acts of 1951, is hereby further amended by striking out the first sentence and inserting in place thereof the following three sentences:— A chief justice or any associate justice of the supreme judicial court, the superior court or the municipal court of the city of Boston, any judge or associate judge of the land court, any judge of probate and insolvency, a justice of any district court other than the municipal court of the city of Boston, or a justice of the Boston juvenile court, who shall be retired under Article LVIII of the amendments to the constitution shall thereupon be entitled to receive a pension for life at an annual rate equal to three fourths of the annual rate of salary payable to him at the time of such retirement, to be paid from the same source and in the same manner as the salaries of like judicial officers of his court are paid. A chief justice, justice, associate justice, judge or associate judge of any such court or courts, appointed to his office on or before July thirty-first, nineteen hundred and fifty-six, who after having served in any such office or offices at least ten years continuously and having attained the age of seventy years, shall resign his office, shall thereupon be entitled to receive a pension for life at an annual rate equal to three fourths of the annual rate of salary payable to him at the time of such resignation, to be paid from the same source and in the same

manner as the salaries of like judicial officers of his court are paid. A chief justice, justice, associate justice, judge or associate judge of any such court or courts appointed to his office after July thirty-first, nineteen hundred and fifty-six, who after having served in any such office or offices at least ten years continuously and having attained the age of seventy years, shall resign his office at any time within thirty days thereafter, shall thereupon be entitled to receive a pension for life at an annual rate equal to three fourths of the annual rate of salary payable to him at the time of such resignation, to be paid from the same source and in the same manner as the salaries of like judicial officers of his court are paid.

# The Commonwealth of Massachusetts

## REPORT OF THE JUDICIAL SURVEY COMMISSION.

*To His Excellency* CHRISTIAN A. HERTER, *Governor of Massachusetts.*

The Judicial Survey Commission was appointed by you in December, 1954, to make a "study of the entire administration of justice in all of the courts of the Commonwealth."

Our basic finding is that while our judicial structure is superior in many ways to that of other States, there are important improvements that should and can be made within the limits of our Constitution.

This Commission, before making its report, was divided into separate subcommittees to study each court. While the subcommittee reports were accepted and filed, they do not necessarily represent the views and opinions of every member of the Commission. The separate topics of our final report represent the views of the Commission as a whole, and have been approved by all of its members, unless otherwise noted.

The administration of justice is overwhelmed by the large volume of motor vehicle tort litigation which has accompanied the growth of automobile traffic in the United States. Massachusetts has failed to use modern methods to cope with this situation. The result is the accumulation of bad housekeeping practices and obsolete procedures.

The courts have within their own grasp many of the steps necessary to improve the administration of justice. It is gratifying to note that the judges of the Superior Court are currently working in that direction.

Some of our recommendations are directed to the courts themselves, and may be put into effect without legislation. But the courts need assistance from the Legislature if they are to do a thorough job of modernizing their procedures. Given the power we recommend to correct the various deficiencies and inadequacies in the administration of justice

which we have found to exist, the courts can then move toward the desired end. If they do not do so, it will be their responsibility.

### Proposal for an Administrator of the Courts.

The judicial system in Massachusetts comprises a huge administrative structure of court houses, judges, clerks, court officers and other employees, without any administrative head and (generally speaking) without any single body of governing rules.

The courts in the structure include the Supreme Judicial Court (7 justices), the Superior Court (32 justices), 14 probate courts (23 justices), the land court (3 judges), the municipal court of the city of Boston (9 justices and 6 special justices), the Boston juvenile court (1 justice and 2 special justices), and 72 district courts (76 justices and 92 special justices).

This is a total of 91 courts with more than 250 justices and special justices in the system. The administration of justice in Massachusetts today is big business, probably costing its citizens between $14,000,000 and $16,000,000 annually.

All our judges, of whatever court, "hold their offices during good behavior" under chapter III, Article I, of the Constitution. This guarantee of life tenure was placed in our Constitution creating the Supreme Judicial Court and applying to all our inferior courts for the protection of the people. Life tenure gives a judge the greatest degree of independence known in modern America. A judge's calling gives him unrivaled responsibility to conduct himself and his court beyond reproach, not only of the bar, but especially of laymen.

We unanimously recommend legislation to create the office of administrator of the courts. The administrator should be appointed by and be responsible to the Supreme Judicial Court.

We would leave intact such administrative powers as now exist in other courts. But we would give to the Supreme

Judicial Court general superintendence and direction of the administration of all courts in the Commonwealth, which it does not now have.

The administrator would be the eyes and ears of the Supreme Judicial Court. One of his first duties would be to find out what it really does cost to run the judicial system. He would also take responsibility for the collection of statistics about the work of all the courts.

We have found that there is room for honest dispute as to how many hours per day and how many weeks per year judges should hold court. We note that in 1951 the Legislature required the justices of the Supreme Judicial Court and of the Superior Court to "devote their entire time during ordinary business hours to their respective duties."

The sittings of the judges of the Superior Court in 1955 amounted to about 35 weeks a year on the average for each judge. Studies made by the administrator will help to establish a reasonable and sufficient workload on a yearly basis.

The Commission has been forcibly impressed with how much an administrator could do in bringing to public attention all the facts and figures on which an intelligent understanding of our courts must depend. We urge that he shall be required to publish annually a comprehensive record of the activities of all of our courts.

We wish emphatically to recommend that the administrator be paid at least $15,000 a year, so that men of outstanding ability will be available for the position.

Provision for an administrative office of the courts is found in a number of other States, such as California, Colorado, Connecticut, Iowa, Kentucky, Louisiana, Michigan, Missouri, New Jersey, North Carolina, Oregon, Rhode Island and Virginia, and in the federal courts, the District of Columbia and Puerto Rico.

Movements are also afoot for the establishment of administrative offices in Alabama, Maryland, Mississippi, Ohio and Texas. Massachusetts needs an administrator as much as any of these other States, and a draft act to create one is appended to our Report on Administration of the Courts.

### Grant of Full Rule-making Power to the Supreme Judicial Court.

We recommend that broad rule-making powers be given to the Supreme Judicial Court, reserving to the Legislature the power to modify or repeal any rule after its adoption. Past experience has shown that the Legislature, with thousands of bills to consider each year, has not accomplished the improvement and modernization of court procedures.

Grant of full rule-making power has been termed by a former president of the American Bar Association as "indispensable to the most thoroughgoing and effective realization" of that Association's program for removing popular dissatisfaction with the administration of justice in the United States.

Proposals to this effect have been under consideration in Massachusetts for a number of years. In one form or another, such broad rule-making powers have already been granted to the highest courts of about half of the States in this country.

We further recommend a minor change in section 147 of chapter 231 of the General Laws, to make it clear that the Superior Court has the power to prescribe forms of pleading in law cases, as it has already done in equity cases. Unless and until the Supreme Judicial Court is given, and exercises, its rule-making power, the Superior Court should be free to exercise power over its own pleadings.

### Relief of Congestion in the Superior Court.

The worst congestion in trial of jury cases in state courts in the entire United States is found in the Superior Court of the Commonwealth of Massachusetts. Massachusetts had the counties of Worcester, Suffolk and Hampden among the 12 state jury courts in the entire country having the longest delay before trial of these cases, according to a 1955 study of the Institute of Judicial Administration.

Official figures from the Superior Court for December, 1955, show that there were 14 sittings in 10 counties in Massachusetts in each of which the approximate average

time between date of entry and trial of jury cases was more than two years. In one sitting it was more than four years. The period of delay has increased since 1950 in 15 of the 19 sittings of the court.

The public pays the price and suffers the ills of congested courts and delayed justice. Almost every citizen suffers from the indirect effects of an inefficient court system.

We make the following recommendations (some of which are already in process of adoption) for action by the Superior Court itself:

1. Restoration of the pre-trial conference procedures which have proved so successful in the past.

2. Extension, where applicable, of the pre-trial and conciliation procedures now used in a few courts, to any other courts in which they can also be used to advantage. In Suffolk, and perhaps in other counties, the last week of each month of civil jury sessions could well be used for conciliation purposes.

3. Reinstatement of the auditor system which proved so successful in eliminating congestion in the years 1935–42.

4. An intensive study of the system of jury commissioners prevailing in Cleveland, Ohio, which has been hailed as a forward step in the administration of justice.

5. Adoption of a policy designed to prevent unnecessary adjournments and continuances of cases once they are on the trial list.

6. Action to eliminate undue delay in judicial decision.

A great deal of the delay in individual cases, with resulting waste of time of the court and attorneys in calling the calendar, results from the unreasonable continuance, solely for the convenience of counsel, of cases already set for trial. We recommend that judges grant continuances only for good cause shown and not for personal convenience of parties or counsel.

Further inexcusable delay has resulted in a few cases because of withholding of judicial decisions. As of December 1, 1955, there were 21 cases pending decision for more than four months in the Superior Court, 5 of which were heard from two to five years ago. This is not justice.

Section 14A of chapter 220 of the General Laws now provides that an associate justice of the Superior Court "shall render his decision within four months from the date when the hearing was closed or within such further time as the Chief Justice may grant."

If cases are not decided within the time limit thus prescribed or extended, we urge the Chief Justice to transmit the number and name of the case, the name of the justice, and the date the hearing closed, to the Judicial Council (and to the administrator after his appointment), for publication in their regular reports to the Governor and to the Supreme Judicial Court.

We have also considered certain measures for relief of congestion in the Superior Court which would require legislation. For reasons set forth in more detail in our separate reports, we recommend the following:

1. Establishment of a $15 jury fee.

2. Provision for limited oral depositions of parties to be taken before trial in the Superior Court.

3. Continuance for five years more of the temporary act, due to expire in September, 1956, permitting district court justices to sit in the Superior Court on misdemeanor and motor vehicle tort cases, with clarifying amendments shown to be necessary in practice.

4. If our recommendation for reporting cases of delayed decision does not achieve its purpose, there would also be need of legislation to insure publication and correction of all such cases.

We do not recommend that additional judges be appointed to the Superior Court. Much is being done, and more can be done, to relieve the present congestion without increasing the size of the court.

We believe that the use of auditors and district court justices, and improvement of the district courts, will make available whatever additional judicial assistance is needed to enable the Superior Court to overcome its present congested condition.

IMPROVEMENT OF THE DISTRICT COURTS.

We strongly recommend complete reorganization of the district courts on a full-time basis under a single integrated plan which should include the municipal court of the city of Boston.

We are against the present system which permits most of the presiding justices and all of the special justices to practice law when they are not actually sitting on the bench. We recommend that all district court judges eventually be made full-time and be prohibited from practicing in any court whatever.

As long ago as 1933 a study urged the elimination of part-time justices. The Judicial Council for twenty years has favored a full-time court system.

Criticisms of the present part-time system were detailed in the 1946 report of a special commission relative to the district court system. The problems described then still exist, and criticism is as rampant today as then.

The Administrative Committee of the district courts has gone as far as it can under existing legislation by prohibiting practice in motor vehicle tort cases of presiding justices, and of special justices who sit on the trial of such cases.

But this does not touch the problem in fields other than motor vehicle tort law. Nor is there anything now in the law or rules to prevent an associate of a part-time justice from practising in that justice's own court. It is a violation of any rightful concept of justice to permit an office associate in a judge's law office to take a case that the judge may not.

We recommend that full-time judicial service be extended as far as possible throughout the district courts. The basic elements of a workable plan were submitted as Senate, No. 300 of 1955 at the last session of the Legislature, but were not approved.

We believe that full-time judicial service can best be achieved by assigning full-time justices to sit on a circuit basis.

We recommend and favor the principle that all full-time judges sitting in courts of equal jurisdiction should be paid equal salaries.

When part-time judges are put on a full-time basis, the salary increases for the judges and for the non-judicial personnel of their courts should be considered separately and quite apart from each other.

We would again call attention to our previous recommendation for the extension of the temporary act permitting district court justices to sit in the Superior Court on misdemeanor and motor vehicle tort cases.

Reform and improvement are long overdue in our district courts.

### Problems of the Probate Court.

Most people in the Commonwealth, at one time or another, find themselves or their relatives and friends involved in proceedings in the probate courts. These courts enjoy an enviable reputation throughout the country for their organization and substantive law, and they are up-to-date in their work.

Nevertheless, the decentralization of these courts, and the lack of supervisory power in any of their judges, have created difficulties in practice before them.

There are 23 probate judges, sitting in probate courts in the 14 counties. Middlesex and Suffolk counties have 3 probate judges each. Bristol, Essex, Hampden, Norfolk and Worcester counties have 2 judges each.

Marked variations in forms, practice and procedure have been permitted to grow up between the courts in the various counties, and even between the judges in a single county.

The 150 printed forms used by the various probate courts vary so widely among the counties that even lawyers find themselves bogged down in practising in counties other than their own. The Legislature in 1951 supplied special funds for a committee to codify these forms. Much work has been done, but to date the consolidation has not yet been made public and adopted.

An administrative committee of the probate courts was created in 1931 by General Laws chapter 215, section 30A "to promote co-ordination in the work of such courts." But this committee was given no more than "general advisory powers."

We recommend that the Administrative Committee of the probate courts be given the power, subject to law, to prescribe and enforce uniform practices and procedures among all the probate courts, in addition to its present co-ordinating functions.

Something must also be done to straighten out the incomprehensible contradictions within a single probate court which occur when two or more judges in the same county hold opposite views on administrative matters.

We recommend that a judge in each county having more than one probate judge be made the chief judge of that county and be given responsibility for the administration of his court.

We recommend amendment of Article XIX of the Constitution to eliminate the requirement of popular election of the registers of probate. The probate judges of each county should be given power to appoint them, just as they now appoint the assistant registers.

The salaries of the registers and of the assistant registers of probate should be made commensurate with those received by comparable officials in other courts.

There have been complaints that even in the courts with several judges, a judge is rarely available in the afternoon of most business days. We understand that a judge in one county construes the provision in the law for "two sittings" per month in his court as requiring him to be present on only two days a month, regardless of the backlog of cases, contested and otherwise.

These and like practices are almost impossible to cope with through any presently constituted central authority. Focusing the light of public opinion on such trouble spots may eventually bring about a remedy, but the process is a long and uncertain one.

We believe that we will not secure the best that we can expect from our fine organization of probate courts in this Commonwealth without the grant of supervisory power to the Administrative Committee of the probate courts and the Supreme Judicial Court.

### Needs of the Land Court.

The land court is fulfilling satisfactorily its function in the specialized field of registered real estate titles.

But our citizens are suffering serious delays due to the heavy burdens thrown on the court by the land-takings for our great highway system.

We believe that these delays could be eliminated by a limited increase in administrative and technical personnel, an equitable adjustment of compensation of present administrative and technical personnel, and the purchase of some much needed equipment.

We recommend legislation to give the judge of the land court responsibility for the administration of the entire land court.

### Supreme Judicial Court.

The Supreme Judicial Court is maintaining the high traditions of its past.

It furnishes an excellent example to the other courts in the Commonwealth through the dispatch with which it has been rendering its decisions in the last decade or so.

There is no substantial delay now between argument and decision, although at one time it was far behind in its work. At the end of September, 1954, 3 cases were undecided; in September, 1955, there were 7 undecided cases.

We believe that the Supreme Judicial Court should have final administrative and supervisory authority over all the other courts of the Commonwealth, with full rule-making power.

We have recommended that an administrative office of the courts, with a competent administrator receiving not

less than $15,000 a year, be appointed to assist the court in the exercise of these powers.

We have also recommended the appointment of advisory committees of lawyers and laymen to frame rules and clear them with other members of the bench and bar. With their assistance, the exercise of rule-making power by the Supreme Judicial Court should not impose any serious burden upon it.

We wish to emphasize that, both in administration and in rule-making, the grant we have recommended is one of power to the court, and it is for the court to determine how far it can and should exercise this power.

### Criminal Cases.

The Commission finds that the administration of criminal justice in the Commonwealth has, on the whole, been well handled. There is no congestion of dockets. Trials have taken place promptly and are well conducted.

We have heard complaints of the practice of district attorneys of occasionally visiting a judge in chambers without being accompanied by defendant's counsel. We believe that however innocent the purpose of such an unaccompanied visit may be, the practice should be discontinued.

We recommend the adoption of some procedure for periodic review by the courts of the status of persons placed on probation, with the view that exemplary conduct of a probationer may warrant reduction of the period of probation.

### Retirement and Salaries of Judicial Officers.

Judges have a constitutional guarantee of life tenure during good behavior, subject only to retirement for "advanced age or mental or physical disability" under Article LVIII.

Pensions at three-fourths of their last salary are now provided for those of our judges who resign after having served ten years continuously and having reached the age of seventy years, or who are retired under Article LVIII.

But such resignations and retirements have been few in number.

It is the belief of a majority of this Commission that no judge hereafter appointed should be entitled to a pension if he remains on his court more than thirty days after having completed ten years' service, having reached the age of seventy years. In our opinion the cause of justice will be furthered in the Commonwealth under such a rule. Judges appointed after their sixtieth birthday could resign with a pension, provided that they resign within thirty days after completion of ten years of service.

Some valuable services will thereby be lost, it is true, but we believe that greater good will be obtained in the court system as a whole.

A majority of the Commission accordingly recommends a statute whereby such judges are entitled to a pension only if they resign within thirty days after having completed ten years' service, having reached the age of seventy. Judges over sixty years of age at the time of their appointment would not have their pension rights affected unless they failed to resign within thirty days after completing ten years' service.

Judges who do not resign within the prescribed time would not be eligible for a pension if at some later date they should resign.

There are obvious hardships in applying to judges now members of our courts the proposed new rule offering pensions only to judges who resign within thirty days after having completed ten years' service, having attained the age of seventy. For one thing, many of our present judges are already over that age.

Therefore, we recommend that the statute be written so that the provision for pensions for judges upon resignation within thirty days after having completed ten years' service having reached the age of seventy, shall apply only to those judges appointed after its enactment. The present pension arrangements should be retained unchanged for all present members of the judiciary.

### Other Salaries.

With the facilities and time at our disposal, it has not been possible to go into the matter of salaries of court officers and probation officers and the apparent disparity between the salaries paid in the various courts. We believe that this whole matter calls for legislative investigation, and recommend that it be given prompt attention.

### Conclusion.

Many of our recommendations concern matters which can be put into effect by the judges of the various courts without further legislation. There is encouraging evidence of an interest in the Superior Court in making progress along these lines.

But it is notorious that the recommendations of most commissions have been more often filed then followed. If this occurs in the present instance, it will be only the public who suffers. The judges and lawyers have learned to live under the present unsatisfactory procedures.

Some of our recommendations call urgently for legislation. Most of them have, indeed, been offered from time to time by the Judicial Council since its creation in 1924.

The recommendations of the Judicial Council are annually referred to the Legislature. But too often in the past they have been allowed to languish in some committee, or have been defeated on the floor of one or the other Houses of the Legislature.

One reason for this is that there have been sharp differences of opinion among the lawyers on the committees of the Legislature and on the floor of its Houses over various proposals for bettering the administration of justice in our courts.

We believe that interested non-lawyers should be given a more important position in passing upon proposals for improvement of judicial administration which come before the Legislature.

Specifically, we recommend to the Speaker of the House and to the President of the Senate, that in making their

appointments to the powerful Committee on the Judiciary, they should not restrict their future appointments to legislators who are lawyers. In this way both the House and the Senate would have laymen to represent the interests of the people at large on the Committee on the Judiciary.

Respectfully submitted,

LOUIS S. COX, *Chairman.*
SAMUEL P. SEARS, *Vice-Chairman.*
JOSEPH P. SPANG, JR., *Vice-Chairman.*
SUMNER H. BABCOCK.
RAYMOND F. BARRETT.
ROBERT W. BODFISH.
BASIL BREWER.
ELLIS W. BREWSTER.
ERWIN D. CANHAM.
ROBERT B. CHOATE.
PAUL F. CRAIG.
THE REV. THEODORE P. FERRIS.
RABBI ROLAND B. GITTELSOHN.
FRANK W. GRINNELL.
LIVINGSTON HALL.
EDWARD B. HANIFY.
JOHN R. HERBERT.
KENNETH J. KELLEY.
VALENTINE P. MURPHY.
PAUL B. SARGENT.
JOSEPH SCHNEIDER.
SAMUEL SEDER.
LAWRENCE B. URBANO.
MOST REV. JOHN J. WRIGHT.

## MINORITY REPORT OF FRANK W. GRINNELL.

I feel obliged to disagree with the Commission on two points.

*First.* — As to judicial retirement — while I join with the majority as to the age of seventy years for the retirement on pension of judges, except members of the Supreme Judicial Court, I think the age for that court should be seventy-five. I am strongly of the opinion that it would be against the public interest to fix the age of seventy for that court. Its position, the nature and incidents of its work, the different and broader functions as the court of last resort, make it the exceptional court in our system, and this is generally recognized. I believe the public should retain their opportunity to have the services of exceptional men for their exceptional court between the ages of seventy and seventy-five. The learning, experience, the judgment, the power of statement of a vigorous member of that court, and of other appellate courts, after seventy have been, and I believe, will be in the future, too valuable to the community to be ignored and discarded at seventy. I believe, with the late Walter Armstrong, former president of the American Bar Association, in the increasing importance of state Supreme Courts and the importance of recognizing this fact.

*Second.* — As to the draft of a rule-making bill, I think it would be wiser to omit from the statute a requirement of a committee and certain specified incidental details. Such a mandatory provision, in my opinion, has no place in such a statute. I do not doubt that the court would need, and would ask for, the assistance of other judges and of the bar, and would get it, as it has in the past; but I think the draft act should be revised to omit the mandatory requirements above referred to, which seem to me expressed in such

a way as to cause unnecessary and unforeseen difficulties to be avoided in the public interest.

FRANK W. GRINNELL.

I subscribe to the views recorded by Mr. Grinnell as to the application of retirement laws to justices of the Supreme Judicial Court.

SAMUEL P. SEARS.

## MINORITY REPORT OF BASIL BREWER, MEMBER OF THE JUDICIAL SURVEY COMMISSION, ON THE SUBJECT OF RETIREMENT AND PENSIONS OF JUDGES.

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The report of the Judicial Survey Commission comments as follows under the subject of "Retirement and Salaries of Judicial Officers":

Judges have a constitutional guarantee of life tenure during good behavior, subject only to retirement for "advanced age or mental or physical disability" under Article LVIII.

Pensions at three quarters of their last salary are now provided for those of our judges who resign after having served ten years continuously and having reached the age of seventy years or who are retired under Article LVIII. *But such resignations and retirements have been few in number.*

The Commission then recommends:

A statute whereby such judges are entitled to a pension only if they resign within thirty days after having completed ten years of service, having reached the age of seventy. Judges who do not resign within the prescribed time would not be eligible for a pension if at some later date they should resign.

The Commission further states in its report that such a statute should apply only to newly appointed judges, as follows:

There are obvious hardships in applying to judges now members of our courts the proposed new rule offering pensions only to judges who resign within thirty days after having completed ten years of service, having attained the age of seventy. *For one thing, many of our present judges are already over that age.* (The age of seventy years.)

Therefore, we recommend that the statute be written so that the provisions for pensions for judges upon resignation within thirty days after having completed ten years of service, having reached the age of seventy, *shall apply only to those judges appointed after its enactment.*

The present pension arrangement should be retained unchanged for all present members of the judiciary.

Thus the Commission's report provides no plan affecting retirement of existing judges of the courts of the Commonwealth nor any recommendation to change their present pension arrangement, though, as stated in the beginning of this dissent, under the present plan "resignations and retirements have been few in number."

Further, in many discussions of the Commission, it was agreed:

1. That failure to resign at the "proper time" by existing judges affected adversely the average "work load" of the courts and added to the delay in hearing cases particularly in the Superior Courts; and

2. In the opinion of the Commission, the failure of existing judges to retire voluntarily was due in part to their uncertainty that pensions provided now would be retained by the Legislature.

Yet the Commission ignores the problem of the existing judges, so far as their retirement and pensions are concerned.

I recommend the following amendment to cure what I believe to be a serious omission of the Commission:

SECTION 1. Section 65A of chapter 32 of the General Laws, as most recently amended by chapter 775 of the acts of 1951, is hereby further amended by striking out the first sentence and inserting in place thereof the following:

A chief justice or any associate justice of the supreme judicial court, the superior court, or the municipal court of the city of Boston, any judge or associate judge of the land court, any judge of probate and insolvency, a justice of any district court other than the municipal court of the city of Boston, or a justice of the Boston juvenile court, shall be entitled to receive a pension for life at an annual rate equal to three fourths of the annual rate of salary payable to him at the time of retirement or resignation, to be paid from the same source and in the same manner as the salaries of like judicial officers of his court are paid, upon his retirement or resignation on either of the following conditions:

(*a*) If he shall be retired under Article LVIII of the amendments of the Constitution; or

(*b*) If, after having served in any such office or offices at least ten years continuously and having attained the age of seventy years, he shall resign his office either before December thirty-first, nineteen hundred and fifty-six, or before he shall have attained the age of seventy-one years; provided, that the governor and executive council shall be authorized to extend his tenure with his consent by postponing the effective date of

his resignation and pension from time to time for such period or periods, not extending beyond his seventy-fifth birthday, as they may deem advisable.

The above provision would apply equally to existing judges and those who shall be appointed.

The principle behind the plan is that all existing judges and those to be appointed shall be assured as to their pensions on their offering to resign.

The purpose of the statute would be to create a binding contract upon the acceptance of the judge's offer to resign. There would be a contract made between the judge and the State, even though the Governor and the Executive Council might decide to postpone the effective date of such resignation. In no circumstance could the Governor and Council under this act postpone the retirement of any judge after the judge's seventy-fifth birthday.

The purpose of giving this authority to the Governor and the Council, that is, to determine the effective date of such resignation, is, of course, to avoid possible problems caused by numerous resignations in a short period, which would place a serious burden on the operation of the courts and a financial burden on the State.

If it is argued it is unwise to give authority to the Governor and the Council to postpone the effective date of retirement on the ground that political influence on the conduct of such judges might result, I call attention to the fact that, with authority under the Constitution to retire judges for advanced age or mental or physical disability resting in the Governor and the Council, only six or so judges have been retired by the Governor and Council in thirty-five to forty years since Article LVIII was approved.

BASIL BREWER.

# REPORTS OF THE JUDICIAL SURVEY COMMISSION

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# REPORTS OF THE JUDICIAL SURVEY COMMISSION.

## REPORT ON ADMINISTRATION OF THE COURTS.

We met with Chief Justice Qua; the late Chief Justice Higgins; Chief Justice Adlow; Judge Leggat, chairman of the Administrative Committee of the probate courts; and Judge Riley, chairman of the Administrative Committee of the district courts.

In various respects, but with singular unanimity, the above-named justices told this Commission in substance that they thought that better administrative procedure should be vested in the courts and probably in the Supreme Court, under the existing statute. Certainly none opposed our suggestions.

Early in its deliberation this Commission decided that it would attempt to make a recommendation within the existing court procedure of Massachusetts, and would keep away from any violent upheaval that would require a constitutional amendment.

As a result of our interviews, we hereby make recommendation of specific legislation which would invest in the Supreme Court itself an administrative officer with appropriate staff and assistance. With due deliberation and purpose the Commission has left the appointment and direction of its administrative officer to the Supreme Court as a whole, rather than to the chief justice as an individual. We believe that in fact the court will follow precedent in leaving the direction of these duties to the chief justice himself, but the Commission felt that should there ever in the distant future be any division whatsoever in the court, it was better to invest these powers in the court rather than in the transient person of the chief justice.

The administrative officer whom we have created is responsible only to the Supreme Court, and has no statutory authority other than the collection of administrative details.

While the power that we have given the Supreme Court is broad and comprehensive, at the same time, the Commission has been careful not to spell out in detail every single function. We have left this to the future discretion of the present chief justice, or the justices of the Supreme Court.

We cannot stress too strongly our insistence that the administrator be paid at a rate of not less than $15,000 per year. Let there be no confusion as to the cost of an administrative office of our courts. In New Jersey, with a much more elaborate administrative set-up, the cost last year was at the rate of only $52,000 annually. The amount of money that can be saved by proper administration would be many times this sum, in our opinion.

As is well known to the members of this Commission, no disciplinary action can be taken against any justice of any court apart from the constitutional provisions for removal; but it is the belief of this Commission that with the proper and tactful handling and suggestion of an administrator and the Supreme Court and the chief justice, great progress can be made in ascertaining the facts and practices which need correction in any part of the Massachusetts court system. We believe that by precept, and perhaps by publicity, and perhaps by public knowledge of all the facts surrounding all our courts, the worst bottlenecks in any level of our courts can be corrected by public opinion, whatever the disposition of an individual judge may be.

In our recommendations we have left intact such administrative powers as now exist in our court system. We have not taken away from any chief justice any of the power he now has for the better administration of his own particular jurisdiction. It is our belief that under the system of administration we propose some of the powers now vested in the chief justice of the Superior Court may be more frequently used. We have preserved the Administrative Committee of the district courts and the Administrative Committee of the probate courts.

Neither of these administrative bodies has any enforceable authority over any judge or any court; but it is our opinion that it would be a mistake at this time to abolish

either of these existing committees, at least until an administrative procedure such as we recommend has been well established and proves successful on an over-all level.

In making these recommendations, this Commission feels that it has asked of others and of itself those questions which the public will be inclined to put, and has resolved them in the form of these recommendations for general legislation.

## Draft Act on Administration of the Courts.

Section 1. Section 3 of chapter 211 of the General Laws, as appearing in the Tercentenary Edition, is hereby amended by adding at the end of said section the following paragraph: —

In addition to the foregoing, the supreme judicial court shall also have general superintendence and direction of the administration of all courts of inferior jurisdiction, including, without limitation, the prompt hearing and disposition of matters pending therein, and the functions set forth in section three C of this chapter; and it may issue such writs, summonses and other processes, and such orders, directions and rules as may be necessary or desirable for the furtherance of justice, the regular execution of the laws, the improvement of the administration of such courts, and the securing of their proper and efficient administration. Nothing herein contained shall affect existing law governing the selection of officers of the courts, or limit the existing authority of the officers thereof to appoint administrative personnel.

Section 2. Said chapter 211 is hereby further amended by inserting after section 3 the following sections: —

*Section 3A.* There shall be an administrative office of the courts with an administrator appointed by the supreme judicial court to serve at the pleasure thereof. The administrator shall be a member of the Massachusetts bar and his compensation shall be at the rate of fifteen thousand dollars per annum. The administrative office of the courts shall be provided with suitable quarters in the Suffolk county courthouse in the city of Boston.

*Section 3B.* The administrator, with the approval of the supreme judicial court, shall appoint and fix the salaries of such employees as may be necessary to perform the duties vested in him by this act. The administrator and these employees shall not engage directly or indirectly in the practice of law.

*Section 3C.* The administrator, subject to the direction and supervision of the supreme judicial court, shall perform the following functions and shall make reports and recommendations to the supreme judicial court relative thereto —

(*a*) Examination of the administrative methods, systems and activities of the judges, clerks, registers, recorders, stenographic reporters and employees of all courts of the commonwealth and the offices connected therewith.

(*b*) Examination of the state of the dockets of the courts, securing information as to their needs for assistance, if any, and preparation of statistical data and reports of the business of the courts.

(*c*) Examination of the arrangements for accommodations for the use of the courts and the clerks, registers and recorders thereof, and the arrangements for the purchase, exchange, transfer and distribution of equipment and supplies therefor.

(*d*) Investigation and collection of statistical data relating to the expenditures of public moneys, state, county and municipal, for the operation and maintenance of the courts and the offices connected therewith.

(*e*) Examination from time to time of the operation of the courts and investigation of complaints with respect thereto.

(*f*) Attendance to such other matters as may be assigned by the supreme judicial court.

*Section 3D.* All judges, clerks, registers, recorders and stenographic reporters and their assistants and employees, the administrative committee of the district courts, the administrative committee of the probate courts, the board of probation, the commissioner of probation and all probation officers shall comply with any and all requests made by the administrator for information and statistical data bearing on the state of the dockets of the courts and such other information as may reflect their activities and the

business transacted by them, and the expenditure of public moneys for the courts and the offices connected therewith. All district attorneys shall comply with any and all requests made by the administrator for information and statistical data bearing on the operation of their offices.

*Section 3E.* The administrator shall submit annually as of June thirtieth to the supreme judicial court a report of the activities of the administrative office of the courts, together with his recommendations, which report shall be a matter of public record and shall be printed as a public document.

*Section 3F.* The supreme judicial court may provide by rule or special order for the holding of conferences of the judges of the various courts and of invited members of the bar, for the consideration of matters relating to judicial business, the improvement of the judicial system and the administration of justice. The administrator shall act as secretary of these conferences.

SECTION 3. Chapter 221 of the General Laws is hereby amended by striking out section 24.

## REPORT ON THE DISTRICT COURTS.

### I. CRITICISMS AND RECOMMENDATIONS.

The Massachusetts district courts have developed through the years without plan. As a result, they have certain serious defects. We are not unmindful of the achievements of the district courts; but for this report we want to direct attention to certain inherent faults that should be corrected.

The faults and their remedies are in two broad fields:

1. We disapprove of the present system of part-time judges which has resulted in serious criticism and loss of confidence in these courts.

2. We find that the haphazard growth of these courts has brought about no real system, and that this has resulted in administrative defects and an inability to integrate these courts with the rest of the judicial structure.

Until conditions are changed, the mass of attorneys will continue to have little confidence in these courts as forums

for disposing of matters of consequence. This means that the public will continue to be deprived to a great extent of the inexpensive expeditious administration of justice that these courts were set up to provide.

The criticisms of the present system were detailed in the 1946 Report of the Special Commission Relative to the District Court System (Senate, No. 450 of 1947). The problems discussed then still exist and criticism is as rampant today as then. There has been no improvement in the situation.

The major criticisms follow:

*1. The Problem of Conflicting Interests.*

The most serious source of difficulty in these courts lies in the fact that by statute the vast majority of judges are cast in the role of judge-lawyers. They are paid part-time salaries for judicial duties and are expected to supplement their incomes through the private practice of law.

A private attorney cannot be blamed for feeling at a disadvantage in court when opposing counsel is a district court judge. He feels that courtesies, such as time of trial and continuances, are extended often for the convenience of his judge-lawyer opponent. It is inevitable for him to believe that in close questions such judicial courtesies may extend to the merits of the cause presented.

It is true that many judges attempt to refrain from engaging in litigation as private counsel. It is equally true, however, that a great proportion of law practice involves hard-fought negotiations between opposing counsel over matters not expected to reach court. It is a difficult task indeed to expect a lawyer to press his side as forcefully as he should, if he expects to be before opposing counsel, sitting as a judge, in another and perhaps more important case.

What must the effect be upon clients in a losing cause who know that the opposing counsel is a judge? Whether true or not, many individuals believe that some extra advantage accrues to their cause when a district court judge

is retained as counsel. Lawyers likewise know of this public belief, and a large majority are of the opinion that a judicial appointment would result in an increased law practice.

These complaints extend not only to judges, but to some degree to law associates of judges. There is nothing to prevent an associate taking cases that a judge may not, or nothing barring such an associate from practicing in the judge's court. This business of law associates leads, of course, to the accusation that judges have exercised influence to secure employment for their associates.

Expecting a judge to seek a livelihood through private practice is the source of another type of complaint — that judges spend a minimum of time on judicial duties. Deserved or not, district courts have the reputation of being "hurry-up" courts with judges rushing matters to completion, or adjourning prior thereto, in order to attend to private clients. Many laywers are dissatisfied with trial time, and dissatisfied with the amount of time given by judges to the consideration of decisions.

In like manner there is great temptation for judges to call upon the services of special justices to an extent greater than the business of courts warrants. Cases disposed of by special justices permit presiding justices to spend more time off the bench in private practice. It is no secret that many presiding justices spend little time in court. In fact, some handle solely criminal business and use special justices for all civil trials. The Administrative Committee does exercise some control over the use of specials in simultaneous sessions, but that Committee faces a difficult problem. The part-time presiding justices are expected to practice law. It is very hard for the Administrative Committee to exercise rigid control under these circumstances.

*2. The Problem of Lack of System.*

There is no real district court system. The courts were originally strictly local, and except for the loose control exercised by the administrative committee, they remain so today. A real system can be effected only when judges have sufficient time to enable them to exchange information and

ideas. Until then, there will continue to be differences in practice and procedure. This is to be expected when 72 separate courts operate, for the most part, independent of each other.

Under today's conditions, there cannot be a proper integration of the district courts with the rest of the court system. It is virtually impossible to use the services of these 72 district courts (73, including Boston municipal court) to alleviate the congestion in the Superior Court.

Due to lack of planning of the court system with each court dealt with as an individual unit, the cost to the commonwealth of maintaining these courts has far exceeded the proportionate increase in court business. There are two reasons for this. The courts today are the subject individually of legislative bills; and secondly, the salaries of many of the non-judicial personnel are tied to the salaries of the judges.

Our recommendations to eliminate the criticisms of district courts follows:[1]

1. We recommend and favor the principle of full-time judicial service under which judges devote their time exclusively to their judicial duties and are prohibited from engaging in the private practice of law.

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[1] Since the recommendations made are broad in scope, we have made none concerning specific statutory problems existing under the present system. For information purposes, however, we present some particular problems existing at present.

(*a*) Chapter 218, section 6, states briefly in relation to courts having more than one presiding justice that "The senior justice shall be the first justice of the court." It has been suggested that this be expanded to delegate to such first justice the necessary administrative powers to make his position effective.

(*b*) Chapter 218, section 40, provides that upon the disability of the presiding justice, the senior special justice shall have and exercise the powers of the justice, and if the justice and special justices are incapacitated, any justice or special justice may "at the request of the clerk" have and exercise such power. It has been suggested that the administrative committee be given the power now placed in the clerks.

(*c*) Under chapter 218, sections 40 and 43A, a possible conflict of authority exists in that a presiding justice may refuse to permit a special justice assigned by the administrative committee to sit in this court. See also chapter 218, section 77A. It has been suggested that this possible conflict be eliminated.

(*d*) Chapter 218, section 52, permits any associate justice of the Boston municipal court to call in a special justice to hold his regularly assigned session. It has been suggested that the chief justice should have the power to control all assignments of special justices.

(*e*) Chapter 218, section 62, provides for the appointment of court officers in the Boston municipal court to be appointed for civil or criminal business. To enable better adjustment of workloads, it has been suggested that this section be clarified to permit assigning any court officer to any session.

2. We recommend and favor the undertaking of a program by which full-time judicial service is ultimately extended as far as possible throughout the district courts. Senate, No. 300 of 1955 contains the basic elements of a workable plan.

3. We believe that full-time judicial service can best be achieved by placing the district courts on a circuit basis.

4. We recommend and favor the principle that all full-time judges sitting in courts of equal jurisdiction be paid equal salaries.

5. We believe that when part-time judges are put on a full-time basis, the salary increases for the judges and for non-judicial personnel should be considered separately and quite apart from each other.

## II. Suggested Plan.

We have recommended a full-time judiciary, and a strengthening of the organizational basis of the district courts. The problem of the type of change that should be made, and the way in which it should be made, is technical and complicated. We do not feel, however, that a finished bill should be included in this report. We do suggest that the aims recommended might best be achieved by a plan having a circuit system as its basic feature. Under a circuit system, with a county as the unit, the courts can remain convenient and accessible, yet be given the benefit of service by judges devoting all of their time to judicial duties. The courts themselves would become integrated, since a judge would no longer sit or be presiding justice solely in one court.

Where most proposed circuit plans have failed is in attempting to solve the problem of reducing the present number of 183 now in the district courts (including the Boston municipal court) to the approximately 50 to 55 full-time judges that could adequately handle present district court business. Since 20 judges are presently full-time (11 in district courts, 9 in Boston municipal court) it means that the total of 163 part-time judge-lawyers must ultimately become 30 to 35 full-time judges.

In 1952 a District Court Survey Committee sponsored by the law schools of Massachusetts, after study, devised a plan that meets these transitional problems. In the last few years, the plan has been submitted to the Legislature in various bills. (Original bill Senate No. 247 of 1953; Senate No. 784 of 1953, Senate No. 322 of 1954, Senate No. 300 of 1955; see also Senate No. 680 of 1954.)

The proposed plan provides a bridge for the transition period. While the number of judges is being reduced, full-time justices would handle most of the *civil* cases on a circuit basis. This would be accomplished by making a number of additional courts full-time immediately. These additional full-time judges and those presently in the system would handle the work of their own courts and in addition the major civil work of the smaller courts on a circuit basis. The part-time presiding justices of courts not made full-time would continue with all rights and powers unchanged except as to jurisdiction to hear major civil matters. No reappointments would be made when vacancies occurred in the part-time courts, but at definite points, additional full-time judges would be appointed until eventually the entire work of the district courts would be handled by full-time judges.

The salient features of the plan are as follows:

(*a*) *Number of Judges.* — Although figures in each bill have varied slightly, the number of new full-time designations immediately needed is approximately 22. It is estimated that 10 more would be needed to complete the plan. With 20 full-time judges at present, we would have approximately 42 full-time judges in the transition stage and 52 when the plan is finally worked out.

(*b*) *Judicial Duties.* — Full-time judges would be expected to handle the civil and criminal cases in their own courts, and in addition to sit on the major civil business in the smaller courts. In this manner a full-time work-load is provided for all full-time judges. Part-time presiding justices continue with powers undiminished except in respect to civil cases. They dispose of the criminal business in their own courts and in addition continue to hear supple-

mentary and summary process, small claims and proceedings relating to juveniles and insane persons. Special justices continue in their present capacity, but, like part-time presiding justices, are limited in respect to civil business.

(*c*) *Judicial Appointments.* — No new appointments of part-time justices, special or presiding, would be made as vacancies occurred. Full-time justices would be assigned to take over all the business of these vacant courts on an expanding circuit basis. Additional new full-time judges would be appointed at specified times until eventually all part-time justices would be replaced by a reduced number of full-time judges handling all the judicial business on a circuit basis.

(*d*) *Administrative Committee.* — The administrative committee would be given additional powers. Although part-time justices are limited in civil jurisdiction, the administrative committee could authorize part-time judges to hear all civil cases as the administration of the courts and public convenience may require. This power would prevent any log-jam in the flow of cases during the transition period. In addition the administrative committee would control the assignment of full-time justices on this circuit basis, and would designate, at specified stages during the transition period, where the additional full-time judges would be needed most.

(*e*) *Courts and Non-Judicial Personnel.* — No courts or sittings are eliminated. All are retained with their present personnel.

(*f*) *Cost of Plan.* — Dependent upon the number of judges made full-time and the salaries paid to them, of course, the plan would probably result in additional costs for the transition period and perhaps a slight saving eventually. On a basis of $12,000 for full-time judges prior plans have estimated an immediate increase of from $65,000 to $85,000 a year, decreasing until savings of $20,000 or more over present judicial costs would be effected. When it is considered that county expenditures for district courts approach three million dollars a year (see House Document No. 2403 for 1953 estimating such expenditures at $2,887,600 and being

prior to certain salary increases), the increase must be considered as insignificant when compared to the increased judicial service.

*Benefits of Plan.*

Once the decision is made that the primary cause of dissatisfaction in the district courts is the part-time judge problem, the benefits of the type of plan discussed are obvious. It permits immediate widespread benefits of full-time judicial service, and provides at the same time a gradual progression into a circuit system having only full-time judges. This circuit base is built into the district courts with a minimum of disturbance to the present system. This means that the inevitable difficulties inherent in any major change are to a great extent limited.

By retaining present part-time presiding justices and special justices and giving to the administrative committee control over assignments and the power to lift restrictions on the hearing of civil cases, present part-time judges would be available to handle difficulties in case loads as the plan progresses. No problem of congestion should occur.

There is a positive groundwork laid for future legislation. The present change is restricted almost entirely to the judiciary. The district court organization is maintained substantially intact. Eventually the judiciary will be composed entirely of full-time judges. At that time factors affecting the courts themselves can be considered on the basis of the effect the change in the judiciary has had. Problems of consolidation of courts and integration with the Superior Court can be tackled on the basis of facts and not surmise. In effect a two-step change is permitted without disrupting the judicial process.

In effect the plan eliminates the autonomy of each court as a subject for individual legislative action. The flood of what amounts to private bills filed in the Legislature each year, and often passed, would cease. The courts would be treated as a system and not as separate units. This coupled with the abolition of the tie-up of judicial and non-judicial salaries would mean that the mounting costs of these courts

(far out of proportion to any increase in business) would be checked. It would be largely impossible to seek and gain legislation affecting a particular individual court.

*Suffolk County.*

In general we have included the municipal court of the city of Boston in our discussion as a district court. Basically it is a district court. Its jurisdiction in the sense of the type of cases it may hear is the same as any district court. However, as noted below, it has always been treated by statute apart from the district courts. It is not under the administrative committee and has always enjoyed the benefit of a salary differential. It has also been given concurrent civil jurisdiction over the area comprising the eight district courts in Suffolk County.

The situation has resulted in Suffolk County being treated differently in various bills. The choice is between integrating all courts in Suffolk County with the Boston municipal court, or leaving the latter alone and handling the eight district courts as though the Boston municipal court did not exist.

We are of the opinion that the courts in Suffolk County should all be eventually a part of the Boston municipal court. Suffolk County contains what amounts to the Commonwealth's only real metropolitan district. Its problems are to a great extent different from those of the rest of the district courts.

Although the justices of the Boston municipal court now receive $15,000 per year as compared with $12,000 for full-time district courts (except 2nd Bristol, $8,800), we do not believe this to be a sufficient reason to maintain two independent court systems side by side in Suffolk County.

## III. Background of the Problem.

For many years the Massachusetts district courts have been a center of controversy chiefly over the problem of the part-time judge. The vast majority of the judges in these courts receive only a part-time salary, and are free to conduct

private law practice on the side. The abuse of judicial power this system makes possible has been recognized as a major obstacle to the efficient administration of justice in the Commonwealth. Your Commission is of the opinion that district courts must have full-time judicial service. In no other way can the loss of confidence on the part of the bar and public in these courts be restored. We recommend a full-time judiciary and suggest what we believe to be a workable plan leading to this objective.

*The Judge-Lawyer Problem.*

At present there are 72 district courts in the Commonwealth in each of which a presiding justice and one or more special justices sit. In 7 of the largest courts, there are 11 full-time justices sitting who are now paid annual salaries of $12,000 and are prohibited from the private practice of law. There remain 65 presiding justices and 92 special justices receiving only a part-time salary. They are expected to augment their incomes through private practice. In Boston, the municipal court of the city of Boston serves much the same function as a district court. It is not, however, formally a part of the district court system, but is set up by statute as a separate court. It is composed of a chief justice and 8 associate justices and has 6 special justices assigned to it. This court has also been recently made full-time with the chief justice receiving a salary of $16,000 and each associate $15,000. Thus in the district courts plus the Boston municipal court, 20 judges are on a full-time basis and 163 presiding and special justices free to engage in private practice when not sitting on the bench.

The salaries of presiding part-time justices vary according to the size of each court. Special justices are paid on a per diem basis only when actually called to sit.

*The Movement for Full-Time Judges.*

The district courts represent an outgrowth of the old justice of the peace system. Gradually on a local basis police courts were substituted for these justices of the peace. Each such police court, now the district courts, was

predominantly local in character. There now exists a loose form of centralized control in the form of an administrative committee composed of five district court judges. This committee inspects the courts and is authorized to require uniform practices, to superintend the keeping of records, and to regulate the assignment of special justices. The courts themselves, however, remain primarily local and independent.

To keep pace with the growing needs of communities, these courts were given an ever-increasing jurisdiction until today on the civil side they are unlimited (but with no equity power), and on the criminal side they handle all but the most serious crimes. Today, sitting without juries, these courts dispose of the great bulk of court business in the Commonwealth.

This wide jurisdiction and consequent volume of business have been important factors in making it imperative to have full-time judges.

Twenty years ago the problem of part-time judges was recognized as an important one by the Special Commission on Public Expenditures in its 1933 report. That report noted that judges must be required to give full time to judicial service "if our courts are to be operated with proper efficiency." (Senate, No. 250 of 1934, p. 36.) It concluded its report by stating that circuit courts with full-time judges was the ultimate objective.

In the same year the Special Crime Commission referred to a system which permitted judges to engage in litigation as "a system which in its actual operation sometimes itself contributed to disrespect for law in the courts" (Senate, No. 125 of 1934, p. 15), and also concluded by recommending the establishment of a circuit system with full-time judges.

The Judicial Council for twenty years has favored full-time judges, adequately paid, so they would not be forced into non-judicial activities. (Tenth Report for 1934.) The Council has recently referred to attempts made to secure full-time justices as movements "to improve the work of those courts and public confidence in them." (Twenty-ninth Report for 1933, p. 50A.)

*Criticisms of the Present System.*

In 1946 the Report of the Special Commission Relative to the District Court System analyzed and catalogued the specific criticisms directed to the part-time judge problem. (Senate, No. 450 of 1947.) Since that report, the situation has not changed significantly. In 1952 a widespread poll was taken of all members of the Massachusetts bar in an effort to determine whether or not criticisms made were valid. The poll was conducted by the District Court Survey sponsored by the law schools of Massachusetts. It consisted of a questionnaire dealing with district court problems, including matters such as disadvantages felt by lawyers when an opposing counsel was a district court judge or an office associate of such a judge; dissatisfaction with the amount of trial time alloted by part-time judges when sitting; procedure and jurisdiction; and proposals for change. Of the 1,300 returned questionnaires, 90 per cent favored a substantial change in the district court system, and 85 per cent specifically favored full-time judges.

The criticisms of district courts are not personal criticisms of the judges but of the system itself, which forces judges into the dual status of judge-lawyer. It is this statutory inconsistency that is the source of trouble. If it were not for the integrity and ability of the vast majority of the judges as individuals, this system could not have functioned as long as it has.

*Problem to be Solved.*

The district court situation is just the reverse of the Superior Court. In the latter there is a congestion problem — too much business. In the district courts, the system of many part-time judges creates a surplusage of judges for the business. It may seem that one logical approach would be to find ways of channeling Superior Court business into the district courts. Such an approach at this time would be unwise. Only after the district courts are placed upon a full-time basis should the problem of better integration be considered. Although cases are removed from the district

courts for many reasons, it cannot be denied that the inherent defects in the system are of such a nature that lawyers and litigants are unwilling to leave important matters there. It would be incongruous under the present scheme to channel Superior Court work back into the district courts. The Commission considers the problem as strictly one of part-time judges at this time.

Substantially these same reasons have led the Commission to reject the idea of placing six-man juries in the district courts. Aside from consideration of the cost necessary to establish adequate courthouse facilities to handle juries, such a move might well result in adding present superior court problems of congestion to the district courts.

*Measures Previously taken.*

Two approaches have been taken in an effort to strengthen the district court system.

The first has been a legislative program of making certain individual courts full time as individual size and business warrants. The Boston municipal court and seven district courts have been made full-time on this basis with justices, except for specials, prohibited from practising law. It is obvious that the majority of district courts will never be of sufficient size to qualify on this basis.

Secondly there has been a policy of alleviating some of the most troublesome areas of conflict by limiting the practice of the judges. At present neither special nor presiding justices may engage in any criminal practice, nor take part in proceedings in their own courts (except special justices in the 7 districts having populations of less than 12,000). In addition, presiding justices may no longer engage in motor vehicle tort practice, and special justices cannot be assigned to hear such cases if they are also part of their private practice. No doubt these limitations have achieved some success in reducing the conflicts brought about by the statutory judge-lawyer status. However, the approach is itself limited. The part-time judges cannot continue to be paid a part-time salary and constantly have their right to practice restricted.

The two measures so far put into practice recognize the problem created by part-time judges, but will never provide an adequate solution.

*Possible Plans for Full-Time Service.*

All district court reorganization plans attempting to solve the judge-lawyer problem have inevitably fallen into one of the following types:

1. One obvious approach is to make all presiding justices full-time. There can be no possible justification for such a move. District court business is not that large. In a majority of courts the justice would spend an average of but a few hours on judicial business; in some, less than an hour. The financial burden would likewise be tremendous if an additional 65 judges were paid an adequate full-time salary. Socially and economically this approach is eliminated.

2. It has then been suggested that all courts where the business warrants it should be made full-time. This has been the legislative policy in recent years. The difficulty, as has been pointed out, is that the great majority of them are not presently and never will be of a size to qualify. Of the present 72 district courts, 7 are now full-time. Not more than a scant half-dozen additional courts could presently be made full-time if the judges were restricted to business in their own courts.

3. Still another suggestion repeatedly offered is that a consolidation of courts be effectuated by abolishing a number of smaller courts. Doubtless it is true that modern transportation has made possible a more effective distribution of courts. It is equally true that in those cities and towns which now have district courts there exists a strong local desire to keep them. The Commission is of the opinion that for the time all present courts should be kept. It seems wiser to have court held at customary places with the judges visiting the smaller courts on a circuit basis rather than to force litigants, police, witnesses and attorneys to travel to other larger courts. Problems of transition to a full-time system are simplified. When the judiciary is on a full-time circuit

basis and smaller courts are in effect sittings, there will exist a situation better adapted to deal with the problem of consolidation.

4. Plans for placing the district courts on a circuit basis have long been proposed. It is the belief of the Commission that only such a plan offers hope for a practical long-range solution, and this has been the basis of our recommendations above for changes in the present system.

*Other States.*

Some might notice that in discussing changes in the district courts no reference is made to situations in other States. No jurisdiction outside Massachusetts is looked to for a model plan. Most States have a variety of minor courts with overlapping jurisdiction and many judicial officers being paid on a fee basis. Here we are fortunate in having basically one type of lower court, and in having all judges paid on a salary basis. There are no real guides to look to in other jurisdictions.

*Juvenile Courts and Jurisdiction.*

At present the only court in Massachusetts limited by statute to matters dealing with juveniles is the Boston juvenile court. It consists of one presiding justice and two special justices, and its jurisdiction covers the same area as that of the criminal jurisdiction of the Boston municipal court. In the remainder of the Commonwealth this jurisdiction over juveniles is part of the jurisdiction of the particular district court in which any such matter arises.

There has been consideration given in the past to the question of juvenile courts. In principle the Commission opposes the creation of courts of specialized jurisdiction. As noted above, most States are endeavoring to alleviate the many problems created by multiple court systems. Their creation lends an undesirable rigidity to the judicial system.

District court jurisdiction in matters dealing with juveniles is not an area that has cried out for change in the same man-

ner as that involving part-time judges. We believe that for the present the juvenile problem, from a court viewpoint, should be left alone.

*Conclusion.*

We have viewed the problem as one at the present chiefly of instituting a system of full-time judges and strengthening the organizational side of these courts. We believe that corollary problems such as the elimination of courts and integration with other elements of the judicial structure (particularly aiding the Superior Court to alleviate congestion) must wait until these basic, preliminary reforms are accomplished. Since the recommended changes, if accepted, are so sweeping, we have not felt it necessary to include those relatively minor changes that might be made in the present system if it were to continue as now constituted.

REPORT ON THE ADMINISTRATION OF CRIMINAL JUSTICE.

In studying the administration of criminal justice we met with district attorneys, probation officers and criminal lawyers. The district attorneys of all counties except Norfolk, and the assistant attorney general in charge of the criminal division of the Attorney General's office attended one of our meetings; the Superior Court probation officers from all counties except Hampden came to another; and a group of prominent criminal lawyers attended a third. We also conferred with the president and secretary of the District Court Probation Officers Association.

Our main conclusion is that the administration of criminal justice in the Commonwealth is excellent. All persons with whom we met shared this view. There is no congestion of dockets, trials take place promptly and are well conducted. For this record the courts and the district attorneys merit the public's confidence and approval.

In certain respects, nevertheless, the administration of criminal justice can be improved. It has come to our attention that district attorneys occasionally visit a judge in chambers without being accompanied by defendant's

counsel. That there should never be discussion of a case under these circumstances hardly needs comment by us. And, indeed, we know of no case where there has been such discussion or a claim that such discussion has taken place. Visits have consisted only of a greeting to a new judge upon the opening of a sitting, or a general examination of the size and character of the trial list. Nonetheless, we believe that however innocent the unaccompanied visit may be in fact, the mere closeting of a district attorney alone with a judge before or during a trial so clouds the legal atmosphere and causes such uneasiness among defendants and their counsel that the practice should be discontinued. Let greetings be extended in full view of every one in open court and let the list be examined there as well.

Sentencing in completed cases should take place out of the presence of jurors in other cases. Jurors observing the imposition of a light sentence in a completed case similar to a case on which they are then sitting, or on which they may be called upon to sit, may later vote for a conviction in the belief that if they are wrong, they are not very wrong, and that the defendant will, after all, suffer only minor discomfiture. The converse is also true. An acquittal may be voted because of disagreement with a severe sentence in a similar case just finished.

We recommend the adoption of a procedure for review by the court of the status of persons placed on probation. Where conduct is exemplary, the court should have the power to reduce the period of probation. The review procedure, where practicable, should include consultation with the judge who imposed sentence.

An important element in the administration of criminal justice is the provision of counsel for indigent defendants accused of serious crime. The Voluntary Defenders Committee, Incorporated, a private charitable agency, carries the bulk of this work in some of the most populous districts in the Commonwealth, including Suffolk and Middlesex counties.

In counties not served by the Voluntary Defenders, members of the bar serve as unpaid counsel in the Superior Court

for needy defendants upon appointment by the court. This is a responsibility which the members of the bar are glad to discharge, for they are officers of the court, but some problems have developed in the process of assignment which merit attention. For instance, unless they are assigned well before a case is called for trial, further delay may be necessary if assigned counsel are to have sufficient time properly to prepare the case for trial.

The determination of whether or not a particular defendant's financial situation warrants the furnishing of counsel without fee is difficult for the court to decide. Before counsel are assigned, we recommend that the defendant be required to make a sworn statement as to his financial need, and that this be checked with the probation officer by the court.

At the present time a copy of a probation officer's confidential background report of a defendant is not given to the defendant, although a copy is furnished to the district attorney on request. We disapprove this practice and recommend its revision to the extent of requiring that the defendant be given a copy of the report if the district attorney has first requested one for himself.

The low salaries of probation officers and the inequitable disparities between their salaries and those of other court officials should not go unnoticed. This is a matter calling for legislative correction and should be given prompt attention.

Despite these shortcomings, we wish to repeat our earlier conclusion that the administration of criminal justice in the Commonwealth is excellent. Correction of the few matters mentioned in this report should make it still better.

## REPORT ON THE PROBATE COURT.

### Background.

The probate system in Massachusetts consists of one separate and distinct probate court for each of the State's fourteen counties. In two of the counties (Suffolk and Middlesex) there are 3 judges apiece, five counties (Bristol,

Essex, Hampden, Norfolk and Worcester) have 2 judges each, with 1 judge in each of the other seven counties, making a total of 23 probate judges. These courts are "of record", with superior and general jurisdiction over (1) probate of wills and administration of estate of deceased persons; (2) guardianship and conservatorship of minors, the insane, spendthrifts, the aged and other incompetents; (3) adoption of children; (4) annulments of marriage and divorce; and (5) miscellaneous other related matters, such as change of name by individuals and administration of trusts.

The probate judges are appointed by the Governor, with the consent of the Executive Council. As in the case of all judges in the Commonwealth a probate jurist has life tenure within the confines of "good behavior." His salary is fixed by statute for his particular county, depending upon its size and population.

There is no over-all chief judge or justice of probate, and even in the counties with more than one judge the "senior" judge has no supervisory powers over the other judges, his primary distinction consisting of the title of "first" judge and the prominence of having court papers issued in his name.

Each probate court includes a register of probate who is elected for a six-year term, and who purportedly conducts the administrative side of the court. However, a great many proceedings and problems in probate involve mixed questions of administrative and substantive law sometimes difficult to discern, which may account at least in part for the fact that the assistant registers, instead of being chosen by the register, are appointed by the probate judge (or judges). The salaries of the register and assistant registers (whose numbers vary with the volume of court business) are fixed by statute (for each county) at amounts certain, as contrasted with that of the clerks of the Superior and district courts whose compensation is based upon a percentage of the salaries of the judges in their particular court, a circumstance recently given wide publicity and resulting in some assistant registers of probate feeling aggrieved at their less favored position.

Unlike the Supreme Judicial Court, which was created by the state Constitution, all other courts of the Commonwealth have been established by acts of the Legislature. Since their inception in 1784 the probate courts have in form and substance been rooted to the underlying principle that most individuals can be trusted to meet their commitments. Under our laws executors, administrators, guardians and other fiduciaries are expected to assume the responsibility of performing their duties and then satisfying the court they have done so by rendering suitable accounts — a procedure directly contrary to the paternalism in vogue in such States as New York and Florida, where a fiduciary can hardly make a move without first obtaining the written approval of the court. This distinction has double significance when viewed in the light of the fact that practically all members of the public at one time or another, in one way or another, find themselves within the province of the probate courts, as compared with the relatively few of the populace who become embroiled in the other courts of the Commonwealth.

### Strength of Basic Structure.

In "surveying" our probate courts we have the benefit of some exhaustive work by others. In 1943 Prof. Thomas E. Atkinson, a national authority in the field, wrote a comprehensive article on "The Development of the Massachusetts Probate System" which he prefaced with: "According to present lights its [Massachusetts] law of administration, while not the most advanced, is certainly representative of the best in probate procedure" and concluded (at the end of thirty pages) with: "The Massachusetts probate court system represents the peculiarly American way of dealing with the judicial aspects of succession to property."

Also, in the early 1940's a committee was appointed under the auspices of the American Bar Association and the American Law Institute directed toward the formulation of a model probate code for submission to the various States. Professor Atkinson and a colleague of equal stature, Prof. Lewis M. Simes, headed this committee. They were as-

sisted by prominent judges, lawyers, teachers and librarians, their labors bearing fruit in 1946 in the form of a "Model Probate Code" which has since been adopted by ten or more States. The Commission has examined this Code and commends it. At the same time, it unhesitatingly adheres to the basic stability and enduring concepts of our own probate administration, which so commanded the respect of the authors of the Model Probate Code as to merit the following comment in their prologue thereto:

> While the probate legislation of the states in which probate codes have been recently adopted has been generally helpful in this connection (making up a model probate code), statutes have also sometimes furnished valuable suggestions for the Model Code. This is particularly true in the case of Massachusetts, where excellent solutions of many problems were found in well-drafted statutes.

Confirmation nearer home can be supplied by the dean of Massachusetts probate authorities, Guy Newhall, who in 1953, in a talk before the Bar Associations, later reduced to writing, said: "You should be thankful that you practice probate law in Massachusetts under a system which I believe to be the most simple and efficient in the world."

The Commonwealth also enjoys an enviable reputation with respect to its substantive probate law as unfolded through the decisions of its courts over the past century and a half. It is common knowledge that the probate opinions of the Massachusetts Supreme Judicial Court have been widely cited by jurists in other States and by the authors of legal treatises. The name of Oliver Wendell Holmes, whose celebrated career included a span as chief justice of our Supreme Court, is hardly more renowned than the names of a dozen other Massachusetts justices who have been recognized for their unexcelled judicial utterances in the advancement of sound probate principles.

### Defects, and Past and Proposed Remedial Measures.

At this point, candor compels an admission that all is not milk and honey in our probate law as it is administered. Complaints abound whenever and wherever there are

lawyers present to voice them. Chief among the reasons for such dissatisfaction has been the lack of uniformity in probate procedures as between the various counties, and even sometimes as between the judges in the same county, to the extent that too often a vital probate question has been answered by one county or by one judge in a way wholly inconsistent with the edicts of a neighboring county or associate judge in the same county. Jealousy and entrenched beliefs are not restricted to personal provocations and at times overflow into judicial processes, thus adding materially to the time, trouble and tribute exacted from the public and the bar in their probate journeyings.

The truth is that the primary problems in probate are not practice and procedure, but people. One outstanding lawyer with over twenty years' close contact with the probate courts has commented: "The answer is to have the right kind of judges, who in turn will appoint the right kind of assistant registers." This is further borne out by the ease in performing any number of tasks in the probate court of a county where the personal equation has been solved or satisfactorily submerged as compared with the arduous egg dances required for the same proceedings in some other county (under the same statutes) where the opposite is true.

Official recognition of grumblings and rumblings was given as far back as 1931 with the creation by the Legislature of an administrative committee of the probate courts whose function was "to promote co-ordination in the work of such courts." Unfortunately the authority granted was limited to visitation and advice, which has seriously impaired the committee's usefulness, despite the appointment thereto by the chief justice of the Supreme Judicial Court of outstanding probate jurists whose experience and capabilities were wasted in words when the power to put such words into action was lacking.

Support for this statement may be found in the situation surrounding the more than 150 printed forms used by the probate courts for petitions, citations, returns of service, affidavits, motions, fiduciary bonds and like probate direc-

tional signals. Such forms, as well as the practices behind them, varied widely between the counties, with the result that the average member of the bar, though perhaps familiar with the *modus operandi* in one county, found himself completely bogged down if not utterly lost in another. Efforts by the administrative committee to unify and co-ordinate such forms as a first step to bringing order out of chaos proved abortive until in 1951 a special committee was appointed consisting of two outstanding younger attorneys, with funds supplied by special act of the Legislature for the express and limited purpose of codifying such forms. Then at last the enlightenment of new viewpoints began to dispel the obscurities in minds which were bent on remaining closed until they were forced open — a process that has already consumed four years, and which, though the results are encouraging, has yet to be brought to a successful conclusion.

Variances in the most perfunctory and routine probate proceedings between the counties became so burdensome in 1948 a committee was appointed by the Boston Bar Association to make recommendations to correct the situation. The best the committee could bring forth after several years of deliberations was to suggest that as many as possible of the variances be published in the association's bar bulletin so that its members could meet such practices on even terms, and with the further thought that their airing might lead to the taking of remedial steps by the courts themselves. The ensuing years have failed to substantiate that committee's hopes.

Even the Judicial Council, created in 1924 "for the continuing study of the organization, rules and methods of procedure of the judicial system of the Commonwealth"[1] and composed of the chief justices (or their judicial nominees) of all the courts, a probate judge, a land court judge, a district court judge, and four members of the bar appointed by the Governor, even this Council's annual reports of suggested reforms have not always been given the weight to which they are entitled.

[1] General Laws, c. 221, § 34A.

This Commission therefore recommends that teeth be put into the probate administrative committee statute by patterning it after the District Court Administrative Committee Act,[1] which in addition to empowering the members thereof to visit the district courts also vests them with the authority "to *require* uniform practices, to *prescribe* official forms and blanks and records" and to "superintend" their keeping, "to *regulate* the assignments of special justices," "to *determine* the number of simultaneous sessions" in any district court, "to determine the times for holding criminal and civil session," "to *require* records to be kept" showing hours of opening and closing court and other information "in the determination of the nature and volume of, and the time required to complete all the work done by any of" the district courts. Fortunately, a well-considered opinion by the late Chief Justice Rugg in 1923[2] has dispelled any doubt as to the constitutionality of this type of statute.

## Further Fuel on the Fire.

Congestion as such is almost non-existent in our probate courts, but there have been complaints that particularly in the counties with three judges rarely is a judge available in the afternoon of most business days, and recently in a one-judge county the present incumbent made up his mind that the provision in the law for "two sittings" per month requires him to be present on only two days in each month, regardless of the backlog of cases, contested and otherwise. These and similar practices are almost impossible to cope with through any presently constituted judicial authority, and it sometimes takes an interminably long time for the light of public opinion to focus itself on such trouble spots and to apply the heat where it is needed.

Others of the complaints which have come to this Commission's attention cover such unrelated (and tempestuous) subjects as —

1. Abuse of the guardian *ad litem* situation — from the intimacies of the appointment to the extent of the fees.

[1] General Laws, c. 218, § 43A (not applicable to the municipal court of the city of Boston).
[2] Commonwealth v. Leach, 246 Mass. 464.

2. Discrimination by certain counties against counsel from other counties.
3. Favoritism in certain instances accorded small inner circle of lawyers — without apparent regard for admonition as to Caesar's wife.
4. Courtroom indecorum of certain judges (a problem not confined to probate courts).
5. "Designations" of judges to sit outside their own counties to fill merely the convenience of restless impulses and not the urgent needs of the resident judge.
6. Necessity for counsel personally appearing in distant probate courts on purely perfunctory matters which in other counties may be handled by mail.
7. Lack of protection from the cross-fire of certain probate officials and jurists.
8. Permitting a probate judge to sit for several years after his marked disability became notorious, utlimately resulting in the undoing by rehearings, etc., of much of the business transacted during said period (a problem also not confined to the probate courts).
9. Insistence upon applying general rules to inapplicable special situations.
10. Inequalities in compensation as between probate court officials and the salaries of those similarly situated in other courts.
11. Absence of a "head" in counties where there is more than one judge.
12. Injudiciousness in *electing* registers of probate, some of whom are not even members of the bar.

Some of the above complaints speak for themselves; others speak only for isolated situations, as it is within the personal knowledge of members of this Commission that on the probate bench are men of dignity and integrity who, knowing that ability comes best cloaked in humility, conduct themselves and their courts in a manner befitting their high responsibilities.

Items 1 to 9, inclusive, can, it is believed, be alleviated (if not entirely eliminated) by strengthening the hands of the administrative committee as previously recommended. This Commission subscribes to the justice of the grievances voiced by the registers and assistant registers of probate in the matter of comparative compensation, and recommends that No. 10 receive humane and curative treatment in the next session of the Legislature. No. 11 also deserves the attention of the General Court, and it is urged that in all counties where there is more than one probate judge, a

judge be given the responsibility for the administration of the court. As for No. 12, this Commission sees no justification for the continued election of registers of probate, and adopts the view that the responsibility for their selection and appointment be vested in the probate judge or judges of their respective counties, and that an appropriate constitutional amendment be enacted to this end.

## Summary and Conclusion.

Looking back, our probate structure has received high praise from noted authorities, its volumes of decided cases are regarded as among the most valuable in existence, and the only pressing problems are superficial ones due principally to a lack of supervision over and co-operation among the tenants of the building and their respective staffs, who have been permitted to make and maintain conflicting and inconsistent rules and regulations which have seriously impeded the efficient operation of the structure as a whole. While it is true any one sufficiently aggrieved has a redress by an appeal to the Supreme Judicial Court, time and the inexorable law of diminishing returns seldom permit the step. Furthermore, appeals of this nature are frowned upon not only by judicial officialdom and the more elite of probate society, but also by a legion of others whose views can best be stated by quoting from Sir Samuel Romily's sage old clerk who once cautioned his master against similar misdeeds in these words: "A solicitor's business depends upon the good opinion of other lawyers, and no lawyer could have a good opinion of a man who went about reforming abuses when he ought to be profiting by them."

We deem it not to be the province of this Commission to conduct a continuing crusade for conformity, but rather to place the torch and the means for carrying it in the hands of those whose ability, experience and position make them the most fit and fitting to undertake the task. It is our view this can best be accomplished by vesting the administrative committee of the probate courts with power to enforce its recommendations, which can be carried out (sub-

ject to the ultimate authority of the Supreme Judicial Court) under the Draft Act submitted herewith and in co-operation with the administrative officer for all the courts, as proposed by the report on Administration of the Courts.

A Draft Act [1] giving power to the administrative committee is herewith attached, wherein the words deleted from the present statute have been so indicated by underlining and the new material italicized.

## REPORT ON THE LAND COURT.

The history of the humble birth and unimpressive beginnings of what is now the land court, — its background, early immaturities, jurisdictional conflicts and constitutional misgivings, followed by a long period of phenomenal growth, elevating judicial influences and illustrious landmarks — can be found, first, in a special twenty-four page number of the January, 1949, edition of the Massachusetts Law Quarterly commemorating the court's fiftieth anniversary, and second, in information received from Senior Land Court Judge John E. Fenton, which graphically portrays the crying need for —

(1) Three assistant land court engineers.

(2) One deputy land court engineer.

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[1] General Laws, c. 215, § 30A.

ADMINISTRATIVE COMMITTEE OF THE PROBATE COURTS.

There shall be an administrative committee of the probate courts, hereinafter called the committee, which shall consist of three judges thereof, assigned to service thereon by the chief justice of the supreme judicial court for such period of time as he may deem advisable. The committee shall be authorized to visit any probate court, as a committee or by sub-committee, to recommend *require* uniform practice and procedure, *to prescribe forms and records and the keeping thereof,* and shall have general advisory powers in relation to such courts *of superintendence over all the probate courts, their registers, assistant registers and other officers and clerks, but except as otherwise provided by law, shall have no power to appoint any such officers. The committee may regulate the assignment of the probate judges in each county, the sessions and sittings of the judges, the time and places for holding such sessions and sittings, and may require such records to be kept as may generally assist in the determination of the nature and volume and the time required to complete all the work of such probate courts.* To promote co-ordination in the work of such probate courts *in the administration of the probate courts* the committee may from time to time call conferences of any or all the judges thereof or of other officials connected therewith, and the traveling expenses of such judges or officials for attending such conferences, and also the necessary expenses of the members of the committee incurred in the performance of their duties as aforesaid, shall, subject to the approval of the governor and council be paid from the state treasury. The committee shall from time to time establish forms for annual reports of the work of the several probate courts and registries of probate; and the several registries of probate shall annually, on or before March *October* first prepare and file with the committee uniform reports of the work of said courts and registries during the preceding fiscal *court* year (1931, 404, § 1: 1934, 330).

(3) An additional court officer.
(4) Two additional senior clerk stenographers.
(5) An additional deputy recorder.
(6) Two more permanent employees by promoting two now temporary junior clerk typists, one of whom now assists part time as a telephone operator, and
(7) Better equipment.

plus the funds for procuring the above, and substantial raises for all members of the present staff.

REPORT ON THE SUPREME JUDICIAL COURT, PROCEDURE AND PRACTICE, RULE-MAKING POWER AND JURY COMMISSIONERS.

The Supreme Judicial Court is in an excellent position as to its docket. There is no lag between argument and decisions. At the end of September, 1954, only three cases were undecided, and at the end of September, 1955, only seven.

Quite properly the tendency has been to relieve this court of work other than that of strictly appellate character. It can function with only five justices as a quorum, although the case load per justice is thereby increased. The cases are fewer in number than formerly, although it is said that they involve more difficult problems. This court is maintaining the high traditions which belong to it.

We recommend a bill to grant full rule-making power to the Supreme Judicial Court. Proposals to this effect have been under consideration in Massachusetts for a number of years. In 1939 such a bill was recommended by the Governor and introduced as Senate, No. 542. It was supported by the Chambers of Commerce of Boston, Lawrence, Springfield, Lynn, Dorchester and New Bedford, and by the Bar Associations of Massachusetts, of Boston, and of many other cities and counties. It was recommended by the Joint Judiciary Committee of the Massachusetts Legislature and passed the Senate by an almost unanimous vote. It failed of passage in the House of Representatives in June, 1939.

This proposal is one of the six major points of minimum and practical standards for state judicial procedures adopted

by the American Bar Association. A former President of the Association, Harold J. Gallagher, Esq., has deemed this "indispensable to the most thoroughgoing and effective realization" of that Association's program for removing popular dissatisfaction with the administration of justice in the United States. See Gallagher, The American Bar Association Program, 287 Annals of the American Academy, May, 1953, page 163.

The courts in Massachusetts need the rule-making power. As Professor Field has said, "There is no single reform so vital to the achievement of a fair, efficient and inexpensive administration of justice as the vesting of full rule-making power (in Massachusetts) in the courts." In drafting a proposed bill on this matter to be submitted in 1956, precautions have been taken to obviate the objections which were urged against the 1939 bill. See Field, Administration of Justice, 1954 Annual Survey of Massachusetts Law, pages 301–302.

The preliminary draft of the rules will be made by an Advisory Committee from the bench and bar, as is the invariable practice in the exercise of the rule-making power in this country. Hearings are usually held at which all interterested parties can put their comments and objections, if any, on record. The court, of course, retains the right to reject or modify any of the rules thus finally proposed.

A draft act is submitted to inaugurate this essential reform. Full protection of the rights of the people of the Commonwealth has been guaranteed. The substantive rights of the parties, and the constitutional rights of all persons, including the right to trial by jury as declared in Articles XII and XV, are specifically preserved. And in addition, there is a specific provision preserving the right of the Legislature to modify or repeal any rule after its adoption. This is a complete answer to a charge that the Legislature is being asked to abdicate any of its functions.

We recommend the amendment of chapter 231 of the General Laws to provide for limited oral depositions of parties before trial in the Superior Court as recommended by the Judicial Council. It should be obvious that a clarification of the issues and definite ascertainment of the factual claims

of the parties will indicate the strength and weakness of each party's position and thus invite the disposal of the case by settlement or otherwise. We believe the use of such depositions will have such a result.

We recommend a moderate jury fee of $15. We feel its requirement will not destroy the right of our citizens to justice. We feel its passage may be urged more strongly if the district courts are made more attractive tribunals for the hearing of matters through the putting of the judges on full time. It would also tend to more hearings before a single justice in the Superior Court.

We recommend the continued sitting of district court judges in misdemeanor cases in the Superior Court and also in motor tort cases, as now provided by law, with perfecting changes, such as provision for allowance of bills of exceptions.

We do not recommend any action at this time on jury commissioners. We feel that this subject calls for an extensive study beyond the available time and facilities of your Commission.

We do not favor juries of six for district courts. Such would invite congestion in these courts, would tend to discourage rather than encourage single justice hearings, and place a burden upon the counties for physical changes in court buildings which seems unwarranted.

We would like to refer to the successful operation of the auditor system in the 1935–1942 period. Power to appoint auditors is presently in the court and needs no additional legislation. The court might give consideration to resumption of the 1935–1942 practice.

We believe that the use of auditors can, as it did when resorted to before, assist in cleaning up the existing Superior Court backlog. We are not satisfied, however, that this practice is the best long-term solution to the problem. We have considered other possibilities, such as requiring trial in the district courts of motor vehicle cases involving small sums, even though the constitutional right to jury trial would necessitate an opportunity for a re-trial in the Superior Court. The risk of a multitude of such re-trials might

be lessened by giving the district court's decision the status of an auditor's report, by making reasonable regulations with reference to costs, or otherwise. We recommend further study by the Judicial Council of possible means of stemming the inflow of jury cases.

## DRAFT ACT ON RULE-MAKING.

SECTION 1. Section 3 of chapter 213 of the General Laws, as amended, is hereby further amended by adding at the end thereof the following paragraphs: —

The supreme judicial court shall have the power to prescribe, by general rules, the forms of process, writs, pleadings and motions, and the rules of pleading, practice and procedure, in civil and criminal cases and proceedings in all the courts of the commonwealth.

Such rules shall not abridge, enlarge or modify any substantive right, and shall preserve the rights of all persons as declared by the Constitution of the commonwealth, including the right of trial by jury as declared in Articles XII and XV thereof.

Before any such rules are adopted the supreme judicial court shall appoint an advisory committee consisting of representatives of the relevant courts and at least eight members of the bar of the commonwealth, to assist the court in considering and preparing such rules as it may adopt. Before any such rule is adopted by it, the supreme judicial court shall make public copies of the proposed rule for the consideration of the bench and bar and people of the commonwealth, and give due consideration to such suggestions as they may submit to it. No rule adopted pursuant to this section shall be effective less than sixty days after its promulgation by the court.

Nothing in this section shall in any way supersede or repeal any rule heretofore prescribed by any court of the commonwealth, or limit the power of any such court to make and amend its rules, except in so far as they are in conflict with general rules prescribed by the supreme judicial court under this section.

All present laws relating to the forms of process, writs, pleadings and motions, and to pleading, practice and procedure, shall be effective as rules of court until modified or superseded by subsequent rule of the supreme judicial court, and upon the effective date of any rule adopted pursuant to this section such laws, in so far as they are in conflict therewith, shall thereafter be of no further force and effect.

SECTION 2. This act shall not abridge the right of the general court to enact, modify or repeal any statute, or modify or repeal any rule of the supreme judicial court adopted pursuant thereto.

REPORT ON THE INTERNAL OPERATION OF THE COURTS.

Since the initial preparation of this report, the Superior Court, under the leadership of Chief Justice Reardon, has begun to carry out an extensive program designed to relieve the problem of congestion. We heartily commend these efforts. Many of the steps now being taken by the court are discussed and recommended in this report, and we urge they be followed through. In our judgment the measures which would be most helpful include the following:

*First.* — Restoration in the Superior Court of the excellent pre-trial conference procedures and practice which began in 1935, but which today, by general admission, have lapsed into ineffectiveness.

*Second.* — Establishment of a $15 jury fee.

*Third.* — Extension, where applicable, to the rest of the Commonwealth, of the conciliation procedures now used in the Superior Court in Berkshire County, as well as in other jurisdictions in the United States.

*Fourth.* — Denial of a pension to future judges who fail to resign within thirty days after having completed ten years of service and having attained the age of seventy. Judges appointed after their sixtieth birthday could resign with a pension within thirty days after completion of ten years' service.

*Fifth.* — Provisions for limited oral depositions before trial in the Superior Court.

*Sixth.* — Revision of rules of procedure under section 147 of chapter 231 of the General Laws, making it clear that the Superior Court has the power to regulate procedure in law cases, as it has done in equity cases.

*Seventh.* — An appeal to the bar, and to their clients — as, particularly, in the case of insurance companies — to co-operate in various practical measures and policies which will help to reduce congestion.

We recognize that other recommendations of the Commission, in particular for the creation of office of administrator under the Supreme Judicial Court, should make a great contribution to the problem of congestion and have a direct bearing on many of the recommendations we have listed.

We realize that each of the proposals we have made will require effective explanation and illustration if they are to be persuasive with public opinion, the General Court, the bench and bar. Impatience with congestion is growing in the Commonwealth. Pressures for far more drastic changes than we have recommended are forming. For instance, the demand for transferring motor vehicle tort cases out of the courts altogether and into administrative tribunals may well become insistent and irresistible if other measures are not effective. (An article in the "Saturday Evening Post" of October 22, 1955, by Samuel H. Hofstadter, Justice of the New York Supreme Court, presses this position.)

Any analysis of the problem of congestion must start with the realistic premise that there is a great mass of trivial litigation constantly finding its way to the dockets of our populous counties, in which jury trials are claimed in motor vehicle and other tort actions involving minor personal injury or property damage. It is highly doubtful that most of the litigants involved in these cases have a genuine preference for trial by jury over trial by the court. It is probable that jury trials are perfunctorily claimed in the generality of cases by counsel who see in a jury trial either a hope of getting the emotional maximum from the case, or as a means of deferring having to try it for a protracted period of time. Since a jury trial entails a large public

expense, it is no infringement of constitutional rights to require of its claimant an additional court fee. The imposition of a reasonable jury fee is an important part of any solution of the problem of congested court dockets.

Pre-trial procedure, as currently operated in the Superior Court, can be greatly strengthened and improved. Such procedure is adapted to the simplification of issues and the saving of time in the trial of cases. To a large extent pre-trial procedure has been currently the victim of the necessity of processing the mass of litigation with which the Superior Court is confronted. This necessity has led to the practice of running pre-trial lists in Suffolk County, with as many as ten cases set down for each hour of the court day. Since no case of any substance can be pre-tried adequately in five minutes, the result is that the pre-trial session operated with so heavy an hourly case-load, becomes primarily an assignment session. In this respect it may have some useful function in stabilizing trial lists, but its more basic function of crystallizing the basic issues in the litigation becomes thwarted. The present pre-trial procedure might well be altered so as to require trial counsel for both parties, in advance of pre-trial, to confer together on the case; to come to court, each with a prepared written memorandum setting forth the position which each counsel has taken in this preliminary conference; and then to be ready to stipulate at the pre-trial hearing on a great number of primary matters whose proof unduly extends the time of trial. It is impossible to catalogue an entire list of such matters. It would be helpful if counsel in most tort cases involving personal injuries, or property damage, would make a binding stipulation at pre-trial as to the monetary value of damage to property; the period of total or partial disability of an injured person; the amount of his or her average weekly earnings prior to the accident and employers' records pertinent thereto; the amount of hospital and doctors' bills; and the substance of actuarial testimony where a claim is made of permanent disability. To make the pre-trial system work, not only as a means of stabilizing trial lists but also as a vehicle for the clarification of issues and the ex-

ploration of settlement possibilities, may require the use of more than one pre-trial session in counties where dockets are presently congested.

At the present time there is competition between the courts in Suffolk, Middlesex and Norfolk Counties in the assigning of trial counsel to trial dates. Mr. A is reached on a case in Suffolk County and shortly before the case is to be tried he empanels a jury in Middlesex or Norfolk County. This situation makes for a good deal of confusion in the running of trial lists. An attempt might be made to cure it by having trial lists for Middlesex, Norfolk and Suffolk counties operated under one central control. Certainly the geographical proximity of the Middlesex Superior Court to Suffolk makes it feasible to operate trial lists in both those counties from one central headquarters. In this way counsel whose conflicting engagements between various counties could be assigned for specific trials in a particular county, and the trial list in the other county arranged so as to call on him when his other engagements are completed.

Again, in Suffolk County where the jury pool system is now invoked, and jurors are no longer summoned to a particular session, the distinction between jury and jury-waived sessions might well be obliterated. Counsel thus given their choice of trying a particular case jury-waived before any one of six to ten justices would probably waive juries, and this in turn would expedite the operation of the trial lists.

The liberal granting of trial postponements as a result of the observance of professional amenities between opposing counsel could be greatly curtailed. Counsel whose case was reached for trial and who sought a postponement might well be required either to have his client present in court when he requested the postponement, or to have a formal written acknowledgment from his client, setting forth the client's knowledge of the requested postponement. In this way it could be speedily determined whether litigants are really as troubled by delays in litigation as they are commonly imagined to be.

## SUPPLEMENTAL REPORT ON THE INTERNAL OPERATION OF THE COURTS.

### What is the Congestion Problem?

Other reports of the Commission have brought out the fact that only in the Superior Court is there any substantial problem of congestion. We present in an Appendix verified figures showing how the civil business of the Superior Court has grown in recent decades, how in a substantial proportion of jury-claimed cases the recovery is less than it costs the Commonwealth to hold the trial, how the pre-trial system in Massachusetts has broken down in contrast to its operation in 1935–38, and other pertinent facts. These figures shed great light on the problem of congestion.

Much more could be written about the actual conditions of congestion in the Superior Court, where in Worcester County in May, 1955, it took a litigant no less than forty-six months to obtain a jury trial for his cause, the worst condition in courts of this jurisdiction in the entire United States. In Suffolk the time was thirty-one months and in Springfield twenty-seven months. The time factor is, of course, of real importance in the administration of justice. Excessive delay may well result in a denial of justice.

Such delay certainly results in diminishing public confidence in the courts, in the legal system, and indeed, in all government. These are dangers which cannot readily be ignored in times like the present.

We believe there are three major avenues of approach to the challenge of congestion: What can be done before cases reach the Superior Court; What can be done in an improved pre-trial procedure; and, What can be done in more effective internal operation of the Superior Court?

A citizen, facing the need for civil litigation, and his counsel find numerous opportunities to settle cases equitably all along the way, and especially before the case reaches the docket or comes to trial. The administration of justice should encourage such settlements without seeking arbitrarily to force them.

One of the first decisions a litigant and his counsel face is whether they will seek justice in the Superior Court with or without a jury, or in the district court.

The recent re-enactment of the Fielding Act requires that automobile accident cases be commenced in a district court. But in this, as in other cases, it is possible with a minimum of expense and formality to remove a case to the Superior Court. It remains to be seen how much effect the Fielding Act alone will have in enabling the district courts to do more to relieve congestion in the Superior Court.

The district courts do not have enough work to keep the judges busy, while the Superior Court is heavily congested. Therefore an early question to be faced in seeking to cope with congestion is whether or not the district courts can be made sufficiently useful to the litigant to draw in more of the cases now going to the Superior Court.

The recommendations of this Commission on the district courts ought to do much to render justice more effective and attractive at the lower level for a certain type of cases. A very large amount of business is transacted in the district courts as it is: 57,000 civil entries in 1953–54 and 67,000 in 1954–55. These figures do not indicate a lack of public confidence in the district courts. With the enhancement of stature and experience which the attainment of full-time judges recommend elsewhere in the Commission's report ought to bring about, there are reasons to believe that the district courts may make a valuable contribution to the relief of congestion in the Superior Court. However, we do not wish to overestimate this factor, for there are clear limits to what the district courts can do even in terms of non-jury cases. Nevertheless, anything which can help these courts to render effective justice will be a useful contribution to the total problem.

The possibility of more extensive use of the district courts, and the value of jury-waived trials in the Superior Court, are emphasized by the large percentage of cases tried in the Superior Court where awards are less than $500. It costs the taxpayers of the Commonwealth at least $500 to try a case in the Superior Court with a jury.

To try the case without jury, whether in the district court or in the Superior Court, would obviously be much cheaper, particularly since a good judge can try several cases without jury in the time it takes to try a single case with a jury.

On these points, the figures are eloquent. In the year ending June 30, 1954, 1,730 civil jury cases were tried through to a verdict in the Superior Court. Of these the plaintiff received nothing in 822 cases, less than $200 in 95 cases, and varying amounts under $500 in 169 other cases. This made a total of 1,086 cases, or well more than half the total 1,730 cases, in which the litigants received less than it cost the Commonwealth to conduct the trial. In the year ending June 30, 1955, 1,620 civil jury cases were tried in the Superior Court, not including the 149 land damage cases which must be tried in the Superior Court. Of these 1,620 jury trials, the plaintiff received nothing in 777 cases, less than $200 in 84 cases, and varying amounts under $500 in 132 cases. That made 993 cases out of 1,620, again well over half, in which the public paid more than the losing party.

We recognize, of course, the constitutional right to a jury trial enjoyed by each citizen. We recognize, further, that money awards are only a partial and limited criterion of the significance of justice. But in all realism and practicality, would not many of these litigants have done just as well in the district courts, or in a jury-waived trial in the Superior Courts? Think of what a saving in money for the taxpayers and in time for all litigants would have been achieved! We know the various reasons which impel counsel to enter the Superior Court and obtain a jury trial. But in such cases as this majority of all Superior Court jury-tried cases, where recovery is less than $500, is this good thinking on the part of counsel, and is it a genuine service and economy to his client, to all the rest of the justice-seeking public, and even in the long run to counsel himself?

Therefore we emphasize here that part of the Commission's recommendations which would strengthen the district courts. The more they can fairly, effectively and equitably handle the lesser litigation of the Commonwealth

the better it will be for the Superior Court. But we know, as we have said, that there are many cases which could not be handled effectively in the district courts.

We have recommended a moderate jury fee of $15. This proposal points in two directions. To some degree it would help head the congested traffic toward the district courts. To a greater degree, perhaps, it would steer litigants toward jury-waived trial in the Superior Court.

The proposal of a moderate jury fee has long been urged by the Judicial Council, and was earnestly recommended in two special messages by Governor Herter in 1955. We believe such a fee would cause litigants or their counsel to pause before making perfunctory and habitual jury claims. We definitely do not believe it is "undemocratic" as is sometimes alleged. We cannot tell what it will do in Massachusetts until we try it.

It is an uncontested fact that many times counsel will claim a jury trial for reasons which are irrelevant to the constitutional right of trial by jury. Such reasons may include the desire to set up a favorable trading situation to secure a settlement without trial, or merely to postpone the need for careful preparation of the case for a considerable period. Claim for jury trial may often be of a most perfunctory character. To the extent that these practices can be cut down by a moderate jury fee, congestion will be relieved without any jeopardy to constitutional rights. There is a difference between the constitutional rights of a citizen and the tactical practices of his counsel. It would seem to us clear that if the congestion of motor tort cases is not cut down by various means, the pressure for transferring such cases to administrative tribunals, as workmen's compensation cases were transferred, will grow apace. And so we emphasize the possibility and desirability of cutting down on unnecessary and perfunctory claims for jury trial as a real contribution to solution of the over-all congestion problem.

Considerably akin to jury-waived trial is the practice of pre-trial conference as it prevailed in Massachusetts from 1935–38, and as it flourishes in various other States today. Figures in the Appendix are eloquent in their revelation of

the decline in effective pre-trial since the change in Mr. Justice Gray's original order of June, 1935, which no longer made it necessary for the litigants to be represented at the pre-trial conference by an attorney having full power to act.

An effective pre-trial system was demonstrated in Boston recently before a representative group of lawyers at a dinner of Suffolk Law School alumni. Clear articles on the subject have been published recently and important addresses made, all emphasizing that effective pre-trial practices can dispatch the work of the Superior Court at greatly accelerated speed and with full satisfaction to all parties concerned.

The crux of the problem, as revealed by the figures, is the change in the court's rule. The present Rule 58, adopted in 1938, makes it possible for litigants to be represented by emissaries of counsel who have little or no power to act. Up to a point, such agents could do useful work in agreeing on stipulations which can hardly be disputed but may produce time-consuming delay in actual trial. Beyond that point, the presence of counsel having full power to act is of great importance if the way for settlement is to be explored fruitfully. At present in Massachusetts, in few cases indeed do counsel expect to reach agreement at the pre-trial conference. But in 1935–38 here, and at present elsewhere, such conferences are ready incubators of settlement. It will be necessary for able judges to devote more time to pre-trial conferences than the present practice in Massachusetts, but such minutes can save hours at the actual trial stage. Therefore we urge warmly the restoration of Mr. Justice Gray's rule, or its substance, and a vigorous effort to make pre-trial do its proper work here in Massachusetts where it once served so effectively to reduce congestion. Other factors in an effective pre-trial system are discussed at greater length in our main report on the internal operation of the courts. This contribution to a total solution requires no legislation. The whole matter rests within the authority of the court, and we hope very much the court will act.

There are other means by which something like the values of a pre-trial conference might be achieved. Mr. Samuel P. Sears, at a meeting of the Commission, proposed that the fifth week in a term of court, after a jury has been summoned for four weeks, could be devoted to a conciliation procedure for cases already on the list and others that might be entered. Some such plan might be well worth experimental trial. The conciliation procedure now under way in Berkshire County, which we recommend, is another method which is well worth trying in other counties where circumstances permit its operation. Under this plan, which was approved by the late chief justice of the Superior Court, referees are appointed by the court to conduct conferences of parties involved in the suit. Both parties must agree to the procedure. One merit of the plan is that arbitration is conducted under the auspices of the court, rather than outside the legal system. The number of motor tort cases in Berkshire County has been appreciably cut by the operation of the conciliation plan.

The use of auditors is another method to speed up and sometimes obviate the time-consuming phases of court trial. The practice of using auditors has a long background in the Superior Court, and it grew substantially from 1929, under the impact of motor tort cases, until 1942, when it was practically discontinued during the drop in entries which marked the war years. Very recently the use of auditors in motor vehicle cases has begun again successfully in some counties. When auditors are carefully chosen because of their experience and capacity, this is a good method of disposing of cases. As it is under the considered control of the court it may be used effectively to reduce the number of jury trials. Auditors' fees are fixed by rule of the court. The mere use of auditors, however, will not solve the present or future problems of the court. We recommend the practice and believe it can be utilized effectively, but its contribution to the total problem is necessarily limited.

We also recommend support of two procedural changes, one providing for oral depositions of parties before trial — a form of pre-trial disclosure — and the other relating to

pleading. The purpose of these proposals is to enable the parties and the court to get at the facts and the undisputed issues in a case earlier than is now possible. Explanation of the history and necessity of these changes, which would require legislation, is well set forth in reports of the Judicial Council.

These and various other practices are all interesting contributions and doubtless of some value, according to circumstances. But we believe no method in this entire area can compare to a properly operated pre-trial conference, which Edson B. Sunderland described as "potentially the most effective instrument for shortening, simplifying, and cheapening civil litigations that ever has been devised.

The Commission has recommended the creation, by legislative act, of an administrator appointed by the Supreme Judicial Court. We are convinced that better administrative procedure to be expected from the functioning of this official will have a marked effect on conditions of congestion in our courts. We believe, as the Commission has already pointed out, that the proposed system of administration will facilitate the more frequent use of powers now vested in the chief justice of the Superior Court.

An eminent member of the bar wrote the Commission to express his real and justifiable alarm at the reduction in numbers of competent trial lawyers. "One could count on the fingers of his hands," wrote this attorney, "the number of lawyers competent to defend an important criminal case in greater Boston, and the day is approaching when a similar situation will be true of the civil trial bar. The cause of this condition is simple. A competent lawyer can make more money by keeping out of court than he can as a trial lawyer . . . . If, as now, we are under the expense of having someone constantly in attendance at a call of the list in Norfolk County, Middlesex County or in some other county, and who must report at the call and devote an entire day to answering two or three cases, then, of course, that cost has its impact on the desirability of being the trial lawyer. . . . This, coupled with the practice of impanelling sometimes two and sometimes three juries, with the trial

lawyers sitting around unable to go elsewhere while waiting for the first impanelled case to finish trial, and then the second impanelled case to finish trial, is a cost to be assessed against the trial of cases." Obviously, more considerate and effective administrative practices are needed.

We have taken notice that there were 21 cases pending decision for more than four months in the Superior Court on December 1, 1955, five of which were heard from two to five years ago. To remedy this highly undesirable situation, we recommend to the chief justice that in a case where an associate justice has failed to render a decision within four months after a hearing was closed, or within such time as the chief justice has granted an extension under chapter 220, section 14A, the Chief Justice send to the administrator for appropriate public notice the number and name of the case, the name of the justice, and the date the hearing closed.

In our main report on the internal operation of the courts, with its recommendations, and in this supplemental report, we believe important facts regarding congestion are set forth, and a number of recommendations for relief are proposed. As in the beginning, we feel there is no one panacea, but that with diligent measures — here a little, there a little — the problem can be solved. We are emphatically of the opinion that these measures which strike at the root of congestion should be given a fair trial before the number of Superior Court judges is increased. Merely to create new judgeships, we feel, would be a palliative at best, instead of a cure, and would soon lead to conditions fully as bad as prevail today. We believe the measures we have proposed will lead to economy for the Commonwealth (the courts today cost $14,000,000 a year as against $8,000,000 in 1914) as well as a saving for litigants and for counsel, will relieve the harassment under which judges naturally operate in the face of their steadily worsening calendar, and will help measurably to restore faith in speedy and effective justice for all the people.

# EXHIBIT A.

## SUPERIOR COURT.

*Civil Cases.*

*Prepared from Tabulated Returns of Clerks of Court in the Thirty-one Reports of the Judicial Council.*

| YEAR. | Entered. | Disposed of. | Tried. | Undisposed of. | Days of Sitting of Superior Court Judges. |
|---|---|---|---|---|---|
| 1924 | 26,606 | 23,080 | 5,203 | 57,066 | 3,580 |
| 1925 | 27,005 | 22,300 | 4,805 | 59,797 | 3,791 |
| 1926 | 27,298 | 27,465 | 4,642 | 58,200 | 4,193½ |
| 1927 | 28,725 | 20,695 | 4,606 | 64,923 | 4,299 |
| 1928 | 36,412 | 24,279 | 4,435 | 75,273 | 4,613 |
| 1929 | 37,032 | 25,128 | 3,828 | 89,103 | 4,133 |
| 1930 | 39,028 | 43,889 | 4,204 | 84,269 | 4,824 |
| 1931 | 39,905 | 38,887 | 3,973 | 85,443 | 4,662 |
| 1932 | 37,956 | 37,431 | 3,927 | 86,154 | 4,454 |
| 1933 | 32,190 | 35,742 | 4,068 | 82,796 | 4,277 |
| 1934 | 28,787 | 35,598 | 3,804 | 76,083 | 4,324 |
| 1935 | 25,022 | 27,815 | 3,894 | 72,817 | 4,461 |
| 1936 | 23,781 | 35,307 | 4,291 | 62,038 | 4,543½ |
| 1937 | 26,868 | 35,192 | 4,180 | 51,079 | 4,287 |
| 1938 | 30,320 | 33,125 | 4,194 | 48,741 | 4,349½ |
| 1939 | 28,741 | 33,352 | 3,879 | 45,981 | 4,490½ |
| 1940 | 26,005 | 30,455 | 3,744 | 45,150 | 4,540½ |
| 1941 | 27,620 | 27,780 | 3,731 | 45,091 | 4,213½ |
| 1942 | 26,622 | 27,046 | 3,455 | 44,830 | 4,436 |
| 1943 | 17,750 | 22,960 | 3,438 | 39,628 | 4,364 |
| 1944 | 15,414 | 19,792 | 2,950 | 35,624 | 4,083½ |
| 1945 | 16,722 | 19,833 | 2,659 | 33,103 | 3,766 |
| 1946 | 20,363 | 23,206 | 3,176 | 30,758 | 4,089½ |
| 1947 | 26,171 | 20,982 | 3,154 | 36,059 | 4,533½ |
| 1948 | 28,840 | 23,145 | 3,277 | 40,260 | 4,169 |
| 1949 | 29,955 | 23,832 | 3,271 | 47,134 | 4,465 |
| 1950 | 30,115 | 25,979 | 3,728 | 51,394 | 4,541½ |
| 1951 | 30,056 | 25,614 | 3,266 | 56,328 | 4,468 |
| 1952 | 31,587 | 27,900 | 3,247 | 60,043 | 4,466 |
| 1953 | 33,060 | 34,045 | 3,538 | 60,445 | 4,593½ |
| 1954 | 33,946 | 29,015 | 3,580 | 64,027 | 4,614 |
| 1955 | 32,266 | 28,951 | 3,433 | 67,421 | 4,347 |

# EXHIBIT B.

*Approximate Time between Date of Entry and Trial of Jury Cases not Advanced.*

| | JULY 1, 1940. | | JULY 1, 1945. | | JULY 1, 1950. | | DECEMBER 1, 1955. | |
|---|---|---|---|---|---|---|---|---|
| | Yrs. | Mos. | Yrs. | Mos. | Yrs. | Mos. | Yrs. | Mos. |
| Barnstable: | | | | | | | | |
| Original | 2 | 4 | – | 5 | 2 | 3 | 1 | 4 |
| Removed | 1 | 11 | 1 | 7⅔ | 1 | 8½ | 2 | 4 |
| Berkshire: | | | | | | | | |
| Original | 1 | – | – | 6 | 1 | 4 | 2 | 10 |
| Removed | – | 10 | 2 | 1⅓ | 1 | 6½ | 2 | 9 |
| Bristol: | | | | | | | | |
| Taunton: | | | | | | | | |
| Original | 3 | 2 | 1 | 6 | 2 | 11 | 2 | – |
| Removed | 3 | 4 | 1 | 5½ | 2 | 11 | 2 | 8 |
| New Bedford: | | | | | | | | |
| Original | 2 | 3 | 2 | 3 | 2 | 11 | 2 | 8 |
| Removed | 2 | 1 | 1 | 10½ | 2 | 11 | 2 | 8 |
| Fall River: | | | | | | | | |
| Original | 1 | 7 | 1 | 3 | 2 | 7 | 2 | 5 |
| Removed | 1 | 5 | 1 | 4½ | 2 | 9 | 2 | 7 |
| Essex: | | | | | | | | |
| Salem: | | | | | | | | |
| Original | 1 | 6 | – | 5 | 1 | 7 | 2 | 5 |
| Removed | 1 | 4 | – | 5 | 1 | 7 | 2 | 7 |
| Lawrence: | | | | | | | | |
| Original | 1 | – | – | 8 | 2 | 1 | 2 | 10 |
| Removed | – | 10 | – | 3½ | 1 | 10 | 2 | 11 |
| Newburyport: | | | | | | | | |
| Original | 1 | 7 | – | 4 | – | 7 | 1 | – |
| Removed | 1 | 1 | – | 4⅓ | 1 | – | 1 | 10 |
| Franklin: | | | | | | | | |
| Original | 1 | 2 | – | 4 | – | 6 | 1 | – |
| Removed | – | 7 | 1 | 5 | 1 | 1 | – | 10 |
| Hampden: | | | | | | | | |
| Original | 2 | 8 | 1 | 8 | 1 | 4 | 2 | 4 |
| Removed | 2 | 5 | – | 6 | 1 | 4 | 2 | 7 |
| Hampshire: | | | | | | | | |
| Original | – | 6 | – | 5 | – | 7 | 1 | 3 |
| Removed | – | 10 | 1 | 1 | – | 7 | – | 6 |

## EXHIBIT B — *Concluded.*

*Approximate Time between Date of Entry and Trial of Jury Cases not Advanced* — Concluded.

| | JULY 1, 1940. | | JULY 1, 1945. | | JULY 1, 1950. | | DECEMBER 1, 1955. | |
|---|---|---|---|---|---|---|---|---|
| | Yrs. | Mos. | Yrs. | Mos. | Yrs. | Mos. | Yrs. | Mos. |
| Middlesex: | | | | | | | | |
| Cambridge: | | | | | | | | |
| Original | 2 | 1 | 1 | 1 | 2 | 9 | 3 | 5 |
| Removed | 1 | 10 | 1 | 2/5 | 2 | 7 1/5 | 3 | 5 |
| Lowell: | | | | | | | | |
| Original | – | 11 | – | 11 | 1 | 6 | 1 | 9 |
| Removed | – | 11 | 1 | 1 1/5 | 1 | 3 | 1 | 11 |
| Norfolk: | | | | | | | | |
| Original | 1 | 8 | 1 | – | 1 | 10 | 2 | – |
| Removed | – | 7 | 1 | 3 1/5 | 2 | – | 2 | 4 |
| Plymouth: | | | | | | | | |
| Plymouth: | | | | | | | | |
| Original | 5 | 11 | – | 10 3/5 | 2 | 5 | 2 | 8 |
| Removed | 1 | 5 | – | 10 | 1 | 3 | 3 | 2 |
| Brockton: | | | | | | | | |
| Original | 1 | 1 | – | 5 | 1 | 9 | 2 | 9 |
| Removed | – | 11 | – | 7 1/5 | 1 | 1 3/5 | 3 | – |
| Suffolk: | | | | | | | | |
| Original | 2 | – | 1 | 1 | 1 | 10 | 2 | 5 |
| Removed | 1 | 10 | 1 | 1 2/5 | – | 6 | 2 | 7 |
| Worcester: | | | | | | | | |
| Worcester: | | | | | | | | |
| Original | 1 | 11 | 1 | 5 | 3 | 1 1/5 | 4 | 1 |
| Removed | 2 | 1 | 1 | 4 1/5 | 3 | 3/5 | 4 | 1 |
| Fitchburg: | | | | | | | | |
| Original | 2 | 2 | – | 5 | 1 | 2 | 2 | 2 |
| Removed | 1 | 5 | – | 6 | 1 | 11 | 2 | 6 1/5 |

# EXHIBIT C.

## SUPERIOR COURT.

*Jury Cases advanced for Trial and tried during the Year ending June 30, 1955.*

| COUNTY. | Original Entries. | Removed Cases. | Total Advanced Cases Tried. |
|---|---|---|---|
| Barnstable | 5 | - | 5 |
| Berkshire | 3 | 4 | 7 |
| Bristol: | | | |
| Taunton | 2 | - | 2 |
| New Bedford | 4 | 2 | 6 |
| Fall River | 2 | 2 | 4 |
| Essex: | | | |
| Salem | 30 | 4 | 34 |
| Lawrence | 4 | 1 | 5 |
| Newburyport | - | - | - |
| Franklin | - | - | - |
| Hampden | 7 | 1 | 8 |
| Hampshire | - | 3 | 3 |
| Middlesex: | | | |
| Cambridge | 64 | 14 | 78 |
| Lowell | 7 | 4 | 11 |
| Norfolk | 8 | 3 | 11 |
| Plymouth: | | | |
| Plymouth | 2 | 4 | 6 |
| Brockton | 16 | 7 | 23 |
| Suffolk | 91 | 36 | 127 |
| Worcester: | | | |
| Worcester | 18 | 2 | 20 |
| Fitchburg | 2 | 1 | 3 |
| | 265 | 88 | 353 |

# EXHIBIT D.

## SUFFOLK SUPERIOR COURT, PRE-TRIAL.

### FIVE YEARS, AUGUST 26, 1935 TO JUNE 30, 1940.

*Cases from Old Dockets Disposed of.*

| YEAR ENDING JUNE 30. | Sent to Trial Session. | Settlements on Pre-Trial List. | Settlements on Trial Lists. | Total Settlements. | Nonsuits. | Defaults. | Nonsuits and Defaults. | Continuance. | Total Disposed of on Pre-Trial List. | Pre-Tried, not Reached for Trial. | Total on Pre-Trial List. | Neither Party. | Settlements (10-Day Order). | Total. |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1935–1936 | 1,662 | - | - | 2,267 | 248 | 197 | 159 | 427 | 4,960 | - | - | - | - | - |
| 1936–1937 | 1,645 | - | - | 2,459 | 251 | 279 | 280 | 571 | 5,485 | 828 | 6,313 | - | - | - |
| 1937–1938 | 1,884 | 1,542 | 1,024 | 2,566 | 102 | 105 | 63 | 493 | 5,213 | 730 | 5,943 | - | - | - |
| 1938–1939 | 1,724 | 1,132 | 902 | 2,034 | 116 | 70 | 55 | 299 | 4,308 | 737 | 5,045 | - | - | - |
| 1939–1940 | 2,107 | 1,401 | 997 | 2,398 | 127 | 263 | 104 | 550 | 5,549 | 1,138 | 7,519[1] | 515 | 326 | 831 |
| | 9,032 | - | - | 11,724 | 844 | 914 | 661 | 2,340 | 25,515 | - | - | - | - | - |
| Cases from old dockets disposed of, 1939–1940 | - | - | - | - | - | - | - | - | 831 | - | - | - | - | - |
| | | | | | | | | | 26,346 | | | | | |

[1] Includes 831 cases from old dockets disposed of.

Cases actually finally disposed of in pre-trial session or on trial lists after pre-trial, before sending to trial session:

| | |
|---|---|
| Settlements | 11,724 |
| Nonsuits | 844 |
| Defaults | 914 |
| Nonsuit and default | 661 |
| Cases from old dockets | 831 |
| | 14,974 |

## EXHIBIT D — *Continued.*

SUFFOLK SUPERIOR COURT, PRE-TRIAL — *Continued.*

FIVE YEARS, JULY 1, 1940 TO JUNE 30, 1945.

*Cases from Old Dockets Disposed of.*

| YEAR ENDING JUNE 30. | Sent to Trial Session. | Settlements on Pre-Trial List. | Settlements on Trial List. | Total Settlements. | Nonsuits. | Defaults. | Nonsuits and Defaults. | Continuances. | Pre-Tried and Referred to Auditors. | Total Disposed of on Pre-Trial List. | Pre-Tried, not Reached for Trial. | Total on Pre-Trial List. | Neither Party. | Settlements (10-Day Order). | Total. |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1940–1941 . . . . . | 1,846 | 1,165 | 894 | 2,059 | 91 | 144 | 1 | 460 | – | 5,116 | – | 5,912 | 80 | 182 | 262 |
| 1941–1942 . . . . . | 1,989 | 1,363 | 1,053 | 2,416 | 145 | 85 | 4 | 628 | 1,119 | 6,386 | – | 7,440 | – | – | – |
| 1942–1943 . . . . . | 1,914 | 986 | 1,228 | 2,214 | 192 | 115 | 27 | 1,003 | 291 | 5,990 | – | 7,655 | 174 | 60 | 234 |
| 1943–1944 . . . . . | 1,634 | 1,063 | 1,092 | 2,155 | 114 | 70 | 10 | 1,628 | 10 | 5,621 | – | 5,889 | – | – | – |
| 1944–1945 . . . . . | 1,763 | 1,330 | 1,070 | 2,400 | 112 | 50 | 7 | 1,595 | 6 | 6,673 | 521 | 7,194 | – | – | – |
| | 9,146 | 5,907 | 5,337 | 11,244 | 654 | 464 | 49 | 5,314[1] | 1,426 | 29,786 | 521 | 34,090 | 254 | 242 | 496 |

[1] Plus 740 cases ordered on non-triable docket in 1944–45.

Cases actually finally disposed of in pre-trial session or on trial lists after pre-trial, before sending to trial session:

| | |
|---|---|
| Settlements . . . . . | 11,244 |
| Nonsuits or defaults . . . . . | 1,167 |
| | 12,411 |

## EXHIBIT D — *Continued.*

SUFFOLK SUPERIOR COURT, PRE-TRIAL — *Continued.*

FIVE YEARS, JULY 1, 1945 TO JUNE 30, 1950.

*Cases from Old Dockets Disposed of.*

| YEAR ENDING JUNE 30. | Sent to Trial Session. | Settlements on Pre-Trial List. | Settlements on Trial List. | Total Settlements. | Nonsuits. | Defaults. | Nonsuits and Defaults. | Continuances. | Pre-Tried and Referred to Auditors. | Total Disposed of on Pre-Trial List. | Pre-Tried, not Reached for Trial. | Total on Pre-Trial List. |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1945–1946 | 1,677 | 907 | 1,016 | 1,923 | 61 | 41 | 7 | 655 | 13 | 4,595 | - | 4,931 |
| 1946–1947 | 1,719 | 1,087 | 973 | 2,060 | 57 | 30 | 8 | 470 | 6 | 4,350 | - | 4,881 |
| 1947–1948 | 1,647 | 668 | 860 | 1,528 | 80 | 50 | 38 | 395 | 30 | 3,768 | - | 4,436 |
| 1948–1949 | 1,625 | 850 | 980 | 1,830 | 92 | 41 | 50 | 701 | 29 | 4,368 | - | 4,368 |
| 1949–1950 | 1,981 | 558 | 1,209 | 1,767 | 135 | 106 | 75 | 388 | 10 | 4,462 | 911 | 5,373 |
| | 8,649 | 4,070 | 5,038 | 9,108 | 425 | 268 | 178 | 2,609[1] | 88 | 21,543 | 911 | 23,989 |

[1] Plus 218 cases ordered on non-triable docket in 1945–46.

Cases actually finally disposed of in pre-trial session or on trial lists after pre-trial, before sending to trial sessions:

| | |
|---|---|
| Settlements | 9,108 |
| Nonsuits or defaults | 871 |
| | 9,979 |

## EXHIBIT D — *Concluded.*

SUFFOLK SUPERIOR COURT, PRE-TRIAL — *Concluded.*

FIVE YEARS, JULY 1, 1950 TO JUNE 30, 1955.

*Cases from Old Dockets Disposed of.*

| YEAR ENDING JUNE 30. | Sent to Trial Session. | Settlements on Pre-Trial List. | Settlements on Trial List. | Total Settlements. | Nonsuits. | Defaults. | Nonsuits and Defaults. | Continuances. | Pre-Tried and Referred to Auditors. | Total Disposed of on Pre-Trial List. | Pre-Tried, not Reached for Trial. | Total on Pre-Trial List. |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1950–1951 . . . . . | 2,314 | 758 | 776 | 1,534 | 144 | 110 | 85 | 545 | 2 | 4,734 | 1,060 | 6,341 |
| 1951–1952 . . . . . | 2,109 | 695 | 877 | 1,572 | 135 | 123 | 97 | 1,037 | 45 | 5,148 | 1,138 | 6,286 |
| 1952–1953 . . . . . | 2,562 | 559 | 848 | 1,407 | 86 | 94 | 28 | 960 | 16 | 5,153 | 623 | 5,776 |
| 1953–1954 . . . . . | 2,323 | 962 | 906 | 1,868 | 150 | 120 | 55 | 1,169 | 28 | 5,713 | 1,691 | 7,404 |
| 1954–1955 . . . . . | 2,279 | 771 | 1,255 | 2,026 | 136 | 122 | 84 | 1,678 | 315 | 6,640 | 1,172 | 7,812 |
| | 11,587 | 3,745 | 4,662 | 8,407 | 651 | 569 | 349 | 5,389 | 406 | 27,388 | - | 33,619 |

Cases actually finally disposed of in pre-trial session or on trial lists after pre-trial, before sending to trial session:

| | |
|---|---|
| Settlements . . . . . | 8,407 |
| Nonsuits or Defaults . . . . . | 1,569 |
| | 9,976 |

## Exhibit E.

Total Civil Trials, Superior Court.

*Civil Trials.*

| | | | |
|---|---|---|---|
| 1954 | All kinds . . . . . | | 3,580 |
| 1955 | All kinds . . . . . | | 3,333 |
| 1954 | Motor torts, jury . . . . . | 1,120 | |
| | Motor torts, non-jury . . . . . | 207 | |
| | Total . . . . . | —— | 1,327 |
| 1955 | Motor torts, jury . . . . . | 1,175 | |
| | Motor torts, non-jury . . . . . | 158 | |
| | Total . . . . . | —— | 1,333 |

The cases tried resulted as follows: —

In the year ending June 30, 1954, 1,730 civil jury cases were tried through to a verdict. Of these, the plaintiff received nothing in 822 cases, less than $200 in 95 cases, and varying amounts of not more than $500 in 169 others, a total of 1,086, or more than half of the 1,730 cases tried at a public cost of more than $500 per day.

In the year ending June 30, 1955, 1,620 civil jury cases were tried (not including 149 land damage cases which *must* be brought in the Superior Court). Of these 1,620 jury trials, the plaintiff received nothing in 777 cases, less than $200 in 84 cases, and varying amounts not more than $500 in 132 cases, a total of 993, or more than half of the 1,620 cases tried at a public cost of more than $500 per day.


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